

CITY FOIA COORDINATOR AND GUIDELINES

The Michigan Freedom of Information Act gives the public the right to request to inspect and receive copies of public records, and to subscribe to regular issuances of public records. Recent amendments to the FOIA will take effect July 1, 2015. These guidelines are for the City's FOIA Coordinator to assist the individual assigned duties thereunder. A person has the right to submit a written request for public record(s) from the City of Carson City and its departments. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the public record[s] being requested.

A. DESIGNATED FOIA COORDINATOR

The City Attorney is the designated FOIA Coordinator, who will accept and disseminate all City and written information requests for all City Departments and the City Library, as outlined in this policy and the MFOIA.

The City FOIA Coordinator shall also accept all subpoenas and requests for records and process the subpoenas in the same manner and immediately forward the written request to the appropriate City Department, in addition to forwarding a copy of the information request to the City Comptroller.

The following officers shall be authorized to act as FOIA Coordinator designees: the City Administrator; City Comptroller or Assistant City Comptroller; the City Police Chief; City Director of Public Services; City Fire Chief; and City Librarian, for purposes of assimilating, processing and calculating charges for production of the public records requested and to prepare a FOIA Detailed Cost Itemization Form to be forwarded to the attention of the City FOIA Coordinator. The City FOIA Coordinator shall be responsible for accepting and processing requests for public records and approve denials in accordance with the MFOIA. The FOIA Coordinator shall also be responsible for keeping a copy of all written requests for one year and one day after the request is made. The FOIA Coordinator shall also be responsible for sending written notices of the ten (10) day extension of response time when a request cannot be completed within the allocated five (5) business days or six (6) days if the request is received by electronic mail or facsimile statutory time period.

All department requests, after being processed, shall be immediately submitted to the City Attorney's Office. If requested, the City Attorney shall make a final determination regarding release of the requested information.

B. REQUESTER RESPONSIBILITIES

1. The requester of records must submit a written request for public record(s) from the City and its departments. All department requests must be submitted to the FOIA Coordinator.
2. The written request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record. The FOIA Coordinator may send a notice requesting clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request.
3. Updates and revisions to the requested information will not be automatically supplied by the City of Carson City. A new written request must be made each time supplemental information is requested.
4. The requestor may use any form they wish or the City Request Form.

C. CITY RESPONSIBILITIES

1. The FOIA Coordinator shall respond to all written requests within five business days, unless a notice of extension has been sent.
2. If the request indicates that the requester desires to inspect public record(s), the FOIA Coordinator will contact the requester to arrange for inspection of non-exempt public record(s) at a reasonable time.
3. The inspection and examination of public record(s) shall be conducted by the requesting person in the presence of an employee of the City of Carson City and under conditions as the FOIA Coordinator, or his or her designee, might require in order to protect the City of Carson City's public records and prevent excessive and unreasonable interference with the discharge of municipal functions.
4. If the request indicates that the requester wishes to have copies of public record(s) prepared and/or mailed, the FOIA Coordinator shall be responsible for providing copies of non-exempt public record(s), subject to the payment of costs, as outlined below.
5. If requested in writing, the custodian of a public record shall provide a certified copy of a public record.
6. If the written request is denied, the FOIA Coordinator shall issue a written notice denying the request.

7. The notice shall include an explanation as to why the requested public record(s) are exempt from disclosure or an indication that the requested public record does not exist.
8. If a request is made for an existing public record that includes information that is exempt from disclosure under the MFOIA, and information that is not exempt, the FOIA Coordinator or designees must separate the material and make the non-exempt material available for examination and/or copying.
9. Additionally, the FOIA Coordinator or designees shall generally describe the material that had to be separated, unless doing so would reveal the contents of the exempt information and thus, defeat the purpose of the exemption.
10. The labor costs incurred in such procedure shall be treated in accordance with the cost provision, as set forth below.
11. The City of Carson City may provide enhanced access for the inspection, copying, or purchasing of select public record(s) that are not confidential or otherwise exempt by law from disclosure.
12. Enhanced access is defined as a public record's immediate availability for public inspection, purchase or copying by digital means.
13. Enhanced access does not include the transfer of ownership of a public record, and the City of Carson City has a duty to ensure ownership of information products and City created intellectual property is protected and maintained. In addition, a written disclaimer should explicitly state that the City of Carson City, in providing enhanced access, make no warranties of any kind, including, but not limited to warranties of accuracy, fitness for a particular purpose, or of a recipient's right of use, and states that all enhanced access is received "AS IS".
14. Recipients of enhanced access are solely responsible for investigating, resisting, litigating and settling such complaints, including the payment of any damages or costs.
15. Neither the City nor the FOIA Coordinator are obligated to create a record, list, compilation or summary of information which does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. In addition, the MFOIA does not impose greater retention of public record responsibilities than what is required under other provisions of the law and/or City Charter.
16. The City of Carson City will utilize its best efforts to respond to all requests made pursuant to the MFOIA. However, the City will search only the most likely locations for responsive public record(s).
17. The City is not required under MFOIA to search each and every record it maintains in order to discover material that might pertain to a specific request.

D. COSTS FOR RESPONDING TO FOIA REQUESTS

Pursuant to the Michigan Freedom of Information Act [MCL 15.233(3)], the City of Carson City is entitled to establish a policy seeking reimbursement to the City for the costs incurred in honoring Freedom of Information Act requests when the FOIA results in an unusually high cost to the public body. Due to the large number of FOIA requests the City of Carson City receives, the implementation of a cost recovery policy is therefore necessary and for each request a FOIA Detailed Cost Itemization Form shall be prepared. In preparation to the Detailed Cost Itemization form the following costs incurred in responding to a FOIA request shall be chargeable to each FOIA requester:

1. Photocopying charges of 32 cents per page, or if the nature of the duplication necessitates duplication by outside sources, the actual cost of employing such outside sources.
2. Labor costs at the hourly wage of the lowest paid employee of the City of Carson City capable of retrieving the information necessary to comply with a request incurred in duplication, mailing, search, examination, review and the deletion and separation of exempt and nonexempt information. The City of Carson City shall specifically identify the nature of the costs.
3. Actual mailing costs.
4. Actual duplication costs for photographs, videotapes, tape cassettes, maps, plans, or microforms and any other type of medium requested.
6. If a person signs an Affidavit of Indigency, the first \$20.00 of the charge is waived. However, the requester is responsible for any costs that exceed \$20.00. The requester is also responsible for paying for duplicate copies of requested information that has previously been provided to the requester.
7. If the total estimated cost of a request exceeds \$50.00, a deposit equal to one-half of the total estimated cost may be requested prior to completing the request.
8. A requester has two weeks to pay for a FOIA request. Un-claimed FOIA requests will be destroyed if left un-claimed for a period of thirty (30) days. Copies shall be made of the check or money order and receipt, which shall be attached to the original FOIA request.
9. The FOIA Coordinator may waive some or all of the costs of responding to a FOIA request if furnishing copies of the requested document(s) is considered as primarily benefiting the general public.

E. COSTS FOR RESPONDING

Pursuant to the MCL 15.232 et seq., the City of Carson City is entitled to establish a policy seeking reimbursement to the City for the costs incurred in responding to enhanced access requests, especially since these requests could result in an unusually high cost to the public body. Therefore, the City of Carson City will charge a reasonable fee to recover only the cost of providing the enhanced access information. The reasonable fee shall include, but not be limited to, the direct cost of creating, compiling, storing, maintaining, processing, upgrading, or enhancing information or data in a form available for enhanced access, including the pro-rated cost of computer hardware and software, system development, employee time, and any other actual costs incurred in supplying the information or record in the form requested by the purchaser. When calculating employee time, the actual wage (plus benefits) of the lowest paid employee capable of performing the responsibilities shall be utilized.

F. APPEALS

In accordance with the MFOIA, where a person's request for a public record is denied, in whole or in part, the person shall be entitled to file a written appeal of the decision in accordance with the following process:

1. The requester shall be advised in writing of the right and the procedure for filing a written appeal to the City Administrator.
2. The FOIA Coordinator shall immediately, upon receipt, refer all written FOIA appeals to the City Administrator.
3. The City Administrator shall then review any materials submitted by the appellant, any written comments received from the FOIA Coordinator or designees, and any other information that the City Administrator deems necessary.
3. The City Administrator has ten days, absent compelling reasons for an extension of time, to take any of the following actions in response to the filing of an appeal of a FOIA request denial:
 - A. Reverse the disclosure denial.
 - B. Issue a written notice to the requester affirming the disclosure denial.
 - C. Reverse the disclosure denial in part and issue a written notice to the requester affirming the denial in part.

G. FORMS TO BE USED

- Request for Public Records Form
- Notice to Extend Response Time Form
- Notice of Denial Form
- Detailed Cost Itemization Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form