

**KENT DISTRICT LIBRARY
FREEDOM OF INFORMATION ACT (FOIA)
PROCEDURES & GUIDELINES
Effective July 1, 2015**

The following Freedom of Information Act Procedures & Guidelines (“Procedures & Guidelines”) are established pursuant to Resolution No. XI. A., adopted by the Library Board of Kent District Library (“Library”) on June 18, 2015. In addition, the Library Board shall create, and make publicly available, a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the Library and explaining how to understand the Library’s written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The Library will post the Procedures & Guidelines and the written public summary on the Library’s website at www.kdl.org.

SECTION 1 - DEFINITIONS

- Act:** The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.
- FOIA Coordinator:** The Library Director, as designated by the Library Board pursuant to Section 6(1) of the Act, and any other individual designated by the Library Director pursuant to Section 6(3) of the Act to act on the Library’s behalf in accepting and processing requests for the Library’s public records and in approving a denial under Section 5 of the Act.
- Person:** An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in Michigan or any other state, or in a federal correctional facility.
- Public Record:** A writing which is prepared, owned, used, in the possession of, or retained by the Library in the performance of an official function from the time it is created and as otherwise defined by the Act. Public record does not include computer software.
- Library:** Kent District Library and its boards and committees.
- Unusual Circumstances:** The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct records pursuant to a single request or the need to collect public records from numerous locations apart from the office receiving or processing the request.

Where not otherwise defined, the words and phrases contained in this Procedures & Guidelines shall have the meaning given to them, if any, by the Act.

SECTION 2 - RIGHT TO RECORDS

A person has the right to review public record(s) from the Library as provided in the Act. The request must be in writing and sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

A person has the right to inspect a public record, or receive copies of a requested public record, unless exempted by law or court order. Upon written request, a person will be provided with a reasonable opportunity to inspect the public records provided by the Library. Inspection of public records shall occur only between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, at the KDL Service Center, 814 West River Center Drive NE, Comstock Park, Michigan unless otherwise agreed by the FOIA Coordinator in his or her sole discretion. Persons with special needs should contact the FOIA Coordinator beforehand to ensure that arrangements for special needs or reasonable facilities are prepared. The Library Board may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. When inspecting public records, a person shall not write on, alter, deface, or otherwise place any mark on a public record. The Library shall protect public records from loss, removal, unauthorized alteration, mutilation, or destruction. The Library may require the necessary copying of a public record for inspection in certain instances such as to allow for the redaction of exempt information, to protect old or delicate original records, or because the original public record is a digital file or database not available for public inspection. In such instances, the Library may require the requesting person to pay fees for such copying prior to inspection.

A person may request that copies of a public record be provided subject to the payment of fees as provided in Section 4 of these Procedures & Guidelines and Section 4 of the Act.

A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated by the Library on a regular basis. A subscription shall be valid up to six months, at the request of the subscriber, and shall be renewable.

SECTION 3 – RIGHTS AND OBLIGATIONS OF THE LIBRARY

The Library shall process all written requests for a public record from a person. A request must sufficiently describe a public record so as to enable the FOIA Coordinator to identify and find the requested public record. If a verbal request is made for information that a Library employee believes is available on its website, the employee shall, where practicable and to the best of the employee's knowledge, inform the requesting party about the Library's website address. If a request has not been made in writing, the FOIA Coordinator may, but is not obligated to, have the person complete the request form (see FOIA request form, Attachment A). Except as provided herein, the Library will not process a request for public records unless the request is in writing.

The Library shall not deliver a copy of a public record or make a public record available to the requesting person until payment of the fees established under Section 4 of these Procedures & Guidelines and Section 4 of the Act. If the Library delivers a copy or makes a public record available and the requesting person has not made payment at the time, the Library shall be entitled

to collect payment from the requesting person by any legal means.

The FOIA Coordinator will provide a certified copy of a public record if a person so requests in writing.

The Act does not require the Library or the FOIA Coordinator to make a compilation, summary, report of information, or create a new public record. Neither the Library nor the FOIA Coordinator is obligated to provide answers to oral or written questions. Unless a person requires the Library to provide copies to the person, the Library may allow for inspection of public records.

The FOIA Coordinator shall keep a copy of all written requests on file for not less than one year.

Whenever copies are made for a requesting party under FOIA, the FOIA Coordinator shall make and keep for its files one extra set of copies thereof, in case it is necessary later to prove exactly which copies were made and given to the requesting party. Such extra set of copies shall be kept by the FOIA Coordinator for at least one (1) year. There shall be no charge or fee to the requesting party for such extra set of copies kept by the FOIA Coordinator.

SECTION 4 – FEES AND DEPOSITS

The Library Board shall adopt, by resolution, a schedule of fees for processing FOIA requests and for providing copies of public records in accordance with the Act. All FOIA requests submitted pursuant to the Act shall be subject to the fees adopted by the Library Board, except any fees as otherwise provided by law. All fees for responding to written FOIA requests shall be itemized in detail on Attachment B (Detailed Cost Itemization). The Library will use the most economical means available for making copies of public records.

The FOIA Coordinator will require that payment be made in full for the allowable fees for processing and responding to a FOIA request before the public record is made available.

The FOIA Coordinator may waive a fee or reduce a fee if it is determined 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.

The Library may charge for the following six categories of costs associated with processing a FOIA request:

- 1) Labor costs directly associated with searching for, locating and examining a requested public record, as provided in Section 4(1)(a) of the Act;
- 2) Labor costs directly associated with a review of a record to separate and delete information exempt from disclosure from information which is not exempt from disclosure, as provided in Section 4(1)(b) of the Act;
- 3) The actual and most reasonably economical costs of computer discs, computer tapes, or other digital or similar media, as provided in Section 4(1)(c) of the Act;
- 4) The actual total incremental cost of duplication or publication, not including labor, of paper copies of public records, as provided in Section 4(1)(d) of the Act;

- 5) The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requesting person on non-paper physical media or through the Internet or other electronic means as stipulated by the requesting person as provided in Section 4(1)(e) of the Act; and
- 6) The actual cost of mailing for sending a public record in a reasonably economical and justifiable manner as provided in Section 4(1)(f) of the Act.

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. If the time involved is less than 15 minutes, there will be no labor charge.
- Charges for labor costs will be determined by using the hourly wages of the lowest paid public body employee capable of performing the work in the particular instance regardless of who actually performed the labor, as provided in the Act.
- Overtime wages will not be included in labor costs unless agreed to by the requesting person and the overtime wages are clearly noted on the Detailed Cost Itemization (Attachment B).
- Labor costs will include a charge to cover or partially cover the cost of fringe benefits. The Library may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier on the Detailed Cost Itemization (Attachment B) but in no case shall the Library charge more than the actual cost of fringe benefits. If the Library includes the website address for a public record in its written response to the requesting person and the requesting person thereafter requests that the public record be provided to him or her in a paper format or non-paper physical media, the Library shall provide the public records in the specified format but may use a fringe benefit multiplier greater than 50% not to exceed the actual costs of providing the information in the specified format as provided in Section 4(5) of the Act. Overtime costs will not be used to calculate the fringe benefit cost.
- Any public records available to the general public on the Library's website at the time a request is made are exempt from charges for labor costs for separating and deleting of exempt information.
- The Library shall not charge for labor directly associated with redaction under Section 14 of the Act if the Library knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the Library's possession.

The cost to provide paper copies of records will be based on the following requirements:

- The cost of paper copies will be calculated as a total cost per sheet of paper and shall be itemized on Detailed Cost Itemization (Attachment B). The cost of paper copies of public records made on standard letter size (8-1/2 by 11") or legal size (8-1/2 by 14") paper will be \$0.10 per sheet of paper. Copies for non-standard or legal size sheets of paper will reflect actual cost of duplication.
- The Library shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

The cost to provide records on non-paper physical media when stipulated by the requesting person will be based on the following requirements:

- Computer discs, computer tapes or other digital or similar media will be at actual and most reasonably economical cost for the non-paper media.
- The requirement to provide records on non-paper physical media will not apply if the Library lacks the technological capability necessary to provide the public record on the non-paper physical media stipulated in the particular instance.
- In order to ensure the integrity and security of the Library's technological infrastructure, the Library will procure any requested non-paper media and will not accept non-paper media from the requesting person.

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

- The actual cost to mail copies of public records using a reasonably economical and justified means.
- The Library will not charge for expedited shipping or insurance unless specifically stipulated by the requesting person but the Library may charge the least expensive form of postal delivery confirmation.

The FOIA Coordinator will only charge a fee for the cost involved with searching for, examining, or reviewing a public record, and the deletion and separation of exempt from nonexempt information, when such activities will result in an unreasonably high cost to the Library, as determined by the FOIA Coordinator. The fee may include the cost of labor for searching for, examining, or reviewing a public record, and the deletion and separation of exempt from nonexempt information, in response to a request for the inspection of a public record or a request for copies of a public record as permitted by FOIA. In determining what is an unreasonably high cost to the Library, the FOIA Coordinator shall consider the following factors on a case-by-case basis:

- Volume of public records requested;
- The time frame for the public records requested;
- Complexity of searching for, examining, reviewing a public record, and the deletion and separation of exempt from non-exempt information;

- The need to search for, examine, and review public records from different departments or offices of the Library;
- The anticipated hours of labor;
- The available staffing for responding to the request;
- The extent to which the particular request incurs costs greater than the costs incurred for the typical or usual request received by the Library.
- Any other similar factors designated as applicable by the FOIA Coordinator.

A public record search shall be made and a copy shall be furnished without the charge for the first \$20.00 of the fee for each request by either of the following:

- An individual who submits an affidavit stating that the person is indigent and receiving specific public assistance or, if not receiving specific public assistance, stating facts showing an inability to pay the cost because of indigency. If the requesting person is eligible for a requested discount, the FOIA Coordinator shall fully note the discount on the detailed itemization described in the Detailed Cost Itemization (Attachment B). If a requesting person is ineligible for the discount, the FOIA Coordinator shall inform the requesting person specifically of the reason for ineligibility in the FOIA Coordinator's written response. An individual is ineligible for this fee reduction if any of the following apply:
 - The individual has previously received discounted copies of public records from the Library twice during that calendar year.
 - The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The FOIA Coordinator may require a statement by the requesting person in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
- A nonprofit organization formally designated by the State of Michigan to carry out activities under subtitle C of the 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, or their successors, if the request:
 - Is made directly on behalf of the organization or its clients;
 - 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
 - Is accompanied by documentation of its designation by the State of Michigan, if requested by the FOIA Coordinator.

In either the Library's initial response or subsequent response to a FOIA request under Section 5(2)(d) of the Act, the Library may require a good-faith deposit from the requesting person before providing the public records if the entire fee estimate or charge authorized under Section 4 of the Act exceeds \$50, based on a good-faith calculation of the total fee. The deposit shall not exceed ½ of the total estimated fee, and the Library's request for a deposit shall include a detailed itemization on the Detailed Cost Itemization (Attachment B). The Library's response shall also contain a best efforts estimate by the Library regarding the time frame it will take the Library to comply with the Act in providing the public records to the requesting party. If the Library does not respond in a timely manner as described in section 5(2) of the Act, it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses.

If the Library has not been paid in full the total fees for copies of public records that the Library has made available to an individual, the Library may require a deposit of up to 100% of the estimated fee before the FOIA Coordinator begins a full public record search for any subsequent written request from that individual if all of the following apply:

- The final fee for the prior written request was not more than 105% of the estimated fee.
- The public records made available contained the information being sought in the prior written request and are still in the Library's possession.
- The public records were made available to the individual, subject to payment, within the time frame estimate described in the prior request.
- Ninety (90) days have passed since the Library 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 Library.
- The FOIA Coordinator calculates a detailed itemization on Attachment B (Detailed Cost Itemization) that is the basis of the current written requests' increased fee deposit.

The Library will no longer require an increased estimated fee deposit from an individual as provided above if any of the following apply:

- The individual is able to show proof of prior payment in full to the Library.
- The Library is subsequently paid in full for the applicable prior written request.
- 365 days have passed since the individual made the written request for which full payment was not remitted to the Library.

The Library has limited in-house capabilities for copying photographs, audio or video tapes, microforms, maps, or plans. If a person requests that copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an officer or employee of the Library is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at Library rates) will also be applied to the charges of the person(s) requesting the public records.

If the Library does not employ a person or firm capable of separating and deleting exempt

from non-exempt information, the Library may use contracted persons or firms to perform this task. In such case, the Library may treat the necessary contract labor costs in the same manner as employee labor costs if the FOIA Coordinator clearly notes the name of the contracted person or firm in Attachment B (Detailed Cost Itemization) provided that the total contracted labor costs will not exceed six (6) times the State of Michigan hourly minimum wage. Contracted persons or firms may include attorneys who are required to separate and delete exempt from non-exempt information.

Charges for labor costs shall be reduced by 5% for each day that the Library exceeds the time permitted in responding to a FOIA request under Section 5(2) of the Act, up to a 50% maximum reduction, if either of the following applies:

- The late response was willful and intentional; or
- The written request, within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically 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 email, letter, or facsimile cover page.

If such a reduction is required for a late response, the FOIA Coordinator shall fully note the reduction on Attachment B (Detailed Cost Itemization).

The FOIA Coordinator shall not charge additional fees for certification of any copies.

A person who has subscribed to future issuances of regularly published public records pursuant to Section 3(1) of the Act may request that the public record, be sent to them or they may be called for pickup of the public record provided, however, that copy fees and mailing charges for such public records must be paid before the requested public record is sent or picked up by the person.

SECTION 5 – PROCEDURES OF THE PUBLIC BODY **IN PROCESSING A FOIA REQUEST**

After a person has made a written request for a public record in accordance with the Act, the FOIA Coordinator shall respond within five (5) business days after its receipt. A written request made by facsimile, electronic mail, or other electronic transmission is not considered received by the FOIA Coordinator until one (1) business day after the electronic transmission is made, as provided in the Act. A written request sent by email and delivered to the Library’s spam or junk folder is not considered received by the Library until one (1) day after it first becomes aware of the written request. The Library will note in its records both the time a written request is delivered to its spam or junk mail folder and the time that it first becomes aware of that request.

A person making a written request for a public record may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This requirement shall not apply if the Library lacks the technological capability necessary to provide records on the particular non-paper physical media stipulated in the particular instance. If public records are provided on non-paper physical

media, electronically mailed or otherwise electronically provided in lieu of paper copies as stipulated by the person making the request, the Library may charge more than the 50% fringe benefit multiplier (not to exceed actual cost) as provided in Section 4(5) of the Act.

If a verbal request is made for information that a Library employee believes is available on its website, the employee shall, where practicable and to the best of the employee's knowledge, inform the requesting party about the Library's website address.

Where a written request is received which does not sufficiently describe the public records requested so as to enable the FOIA Coordinator to identify and find the public record, FOIA Coordinator will notify the requesting person of the need for a clarification. Such notice, if sent, shall not be interpreted as a denial of the request for purposes of the Act or these Procedures & Guidelines. Any clarification will be considered a new FOIA request subject to the timelines described in this Section and the Act.

The FOIA Coordinator will process written requests for a public record by responding within five (5) business days of receipt in one of the following five ways:

1) Grant the request.

If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will contact the person to arrange for inspection at a reasonable time during normal office hours.

If the request indicates that the person is requesting copies of a public record, the FOIA Coordinator will forward notification to the requesting person indicating the amount due and where the documents may be released upon payment of the applicable fees. However, if the request is estimated to generate entire fees of \$50 or more, the FOIA Coordinator may require fifty percent (50%) of the estimated charges be deposited in advance of the processing of the request provided, however, that in the request for the deposit, the FOIA Coordinator shall include a detailed itemization of the estimated fees (using Attachment B/Detailed Cost Itemization) and a "best efforts" estimate of a nonbinding time frame for providing the public records. The FOIA Coordinator will not process the request unless and until the deposit is made. The balance of the fees must be paid prior to release of documents.

2) Issue a written notice denying the request. The FOIA Coordinator may use the form attached as Attachment D for this purpose. The notice of the denial shall include:

- an explanation as to why the requested public record is exempt from disclosure in accordance with the Act, or
- a certificate that the requested public record does not exist under the name given by the requesting person or by another name reasonably known to the Library, or
- a description of a public record or information which had to be separated or deleted from the public record pursuant to Section 14 of the Act.
- In addition to the explanations noted above, the denial shall also include a

full explanation of the person's right to appeal the denial to the Library Board and to seek judicial review in accordance with Section 10 of the Act.

- 3) Grant the request in part, and issue a written notice denying the request in part. In the latter instance, the public records exempted from disclosure shall be treated as in subsection (2) above.
- 4) Issue a written notice extending the time in which to respond to the request by ten (10) business days. The FOIA Coordinator may use the form attached as Attachment C for this purpose. The notice will specify the reasons for the extension and the date by which the Library will grant the request, deny the request, or grant in part and deny in part the request. The Library shall not issue more than one such notice of extension for a particular request.
- 5) Issue a written notice indicating that all or a portion of a requested public record is available at no charge on the Library's website. To the degree practicable, the written response shall include a specific webpage address where the requested information is available. On Attachment B (Detailed Cost Itemization), the FOIA Coordinator shall separate the requested public records that are available on the Library's website from those that are not available on the website and shall inform the requesting party of the additional charge to receive copies of the public records that are available on its website. If the Library has included the website address for a public record in its written response to the requesting person and the requesting person thereafter stipulates that the public record be provided to him or her in a paper format or non-paper physical media, the Library shall provide the public records in the specified format but may use a fringe benefit multiplier greater than 50% not to exceed the actual costs of providing the information in the specified format as provided in Section 4(5) of the Act.

Failure to respond to a written request in a timely manner as required by Section 5(2) of the Act constitutes a denial of the request if either of the following apply:

- The failure was willful and intentional; or
- the written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference to the Act, on the front of an envelope or in the subject line of an electronic mail, letter, or facsimile cover page.

A copy of these Procedures & Guidelines and the written public summary of these Procedures & Guidelines shall be furnished free of charge to the requesting party in response to a written FOIA request and upon request by visitors at the Library Building or other Library offices. In lieu of providing paper copies of the Procedures & Guidelines and the written public summary thereof in response to a written FOIA request, the FOIA Coordinator may include the Library website link to the Procedures & Guidelines and the written public summary of the Procedures & Guidelines.

SECTION 6 – PROCEDURES FOR SEPARATION OF RECORDS

If a request is made for an existing public record that includes information which is exempt from disclosure under the Act and information which is not exempt, the FOIA Coordinator must separate the material and make the nonexempt material available for inspection and copying. As provided in Section 4 of these Procedures & Guidelines, the FOIA Coordinator may use contracted persons or firms to separate and delete exempt from non-exempt information if the Library does not employ a person or firm capable of performing this task. Additionally, if the separation is readily apparent to a person requesting to inspect or receive copies, the FOIA Coordinator shall generally describe the material exempted unless doing so would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

SECTION 7 – FOIA COORDINATOR

The FOIA Coordinator shall be responsible to accept and process requests for public records and approve denials in accordance with Sections 5(4) and (5) of the Act.

SECTION 8 – APPEALS-DENIALS

In accordance with the Act, 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 on the decision in accordance with the following process:

- The person shall be advised by the FOIA Coordinator of the right to file a written appeal to the Library Board as “the head of the public body” which shall specifically state the word "appeal" and identify the reason(s) for reversal of the denial. The person making the appeal may use the form attached as Attachment E.
- The Library Board is not considered to have received a written appeal until the first regularly scheduled meeting of the Library Board following submission of the written appeal.
- In its consideration of any written appeal, the Library Board shall review the materials submitted by the appellant, any written comments received from the FOIA Coordinator, any other information as the Library Board deems necessary, and within ten (10) business days after receiving the written appeal as provided above, take one of the following actions:
 - reverse the disclosure denial, or
 - issue a written notice to the requesting person upholding the disclosure denial, or
 - reverse the disclosure denial in part and issue a written notice to the requesting person upholding the denial in part, or

- under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the Library Board will respond to the written appeal. The Library Board shall not issue more than one notice of extension for a particular written appeal.

Whether or not a person has submitted an appeal under this Section, the person may choose to commence an action in the Circuit Court to compel the Library's disclosure of public records as provided in Section 10 of the Act.

SECTION 9-APPEALS-FEES

If a requesting person believes that the Library is requiring a fee that exceeds the amount permitted under these Procedures & Guidelines or Section 4 of the Act, the requesting person may submit to the Library Board as the "head of the public body" a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted. The person making the appeal may use the form attached as Attachment F. The Library Board is not considered to have received a written appeal until the first regularly scheduled meeting of the Library Board following submission of the written appeal.

Within 10 business days after receiving a written appeal challenging fees, the Library Board shall do one of the following:

- Waive the fee.
- Reduce the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the Act that supports the remaining fee. The determination shall include a certification from the Library Board that the statements in the determination are accurate and that the reduced fee amount complies with these Procedures & Guidelines and Section 4 of the Act.
- Uphold the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Library Board that the statements in the determination are accurate and that the fee amount complies with these Procedures & Guidelines and Section 4 of the Act.
- Issue a notice extending for not more than 10 business days the period during which the Library Board must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Library Board shall not issue more than 1 notice of extension for a particular written appeal.

Within 45 days after receiving notice of the Library Board's determination of an appeal regarding fees under this Section or the Library Board's failure to act timely on the appeal as required by Section 10a(2) of the Act, the person who filed the appeal may commence a civil action as provided in Section 10a of the Act. If a civil action is commenced against the Library under this Section, the Library is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

As used in this Section, "fee" means the total fee or any component of the total fee calculated under Section 4 of the Act, including any deposit.

SECTION 10-INTERPETATION AND EFFECTIVE DATE

These Procedures & Guidelines are intended to fully comply with the Act. In the event of any inadvertent inconsistency between the Act and these Procedures & Guidelines, the Act shall control.

These Procedures & Guidelines shall become effective as of July 1, 2015.

SECTION 11 – FORMS

The following forms attached hereto are incorporated into these Procedures & Guidelines:

Attachment A	FOIA Request for Public Records Form
Attachment B	Detailed Cost Itemization
Attachment C	Notice to Extend Time for a FOIA Request
Attachment D	Notice of Denial of FOIA Request
Attachment E	FOIA Appeal Form-To Appeal of a Denial of Records
Attachment F	FOIA Appeal Form-To Appeal an Excess Fee

The FOIA Coordinator may use the forms in substantially the form attached as Attachments A through F in processing FOIA requests. The FOIA Coordinator may modify the forms attached as Attachments A through F as necessary or appropriate to conform the forms to these Procedures & Guidelines or the Act or to otherwise improve the forms for use by the FOIA Coordinator and the public.

ATTACHMENT A

If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Library must notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the Library must separate the requested public records that are available on its website from those that are not available on the website and must inform the requesting person of the additional charge to receive copies of the public records that are available on its website.

If the Library includes the website address for a record in its written response to the requesting person and the requesting person thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the Library must provide the public records in the specified format (if the Library has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

Request for Copies/Duplication of Records on Library Website

I hereby stipulate that, even if some or all of the records are located on a Library website, I am requesting that the Library make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature

Date

Overtime Labor Costs

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

Consent to Overtime Labor Costs

I hereby agree and stipulate to the Library using overtime wages in calculating the following labor costs as itemized in the following categories:

1. Labor to copy/duplicate 2. Labor to locate 3a. Labor to redact 3b. Contract labor to redact
 6b. Labor to copy/duplicate records already on Library's website

Requestor's Signature

Date

Request for Discount: Indigence

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence. If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:
 - (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
 - (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body 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.

Office Use: Affidavit Received Eligible for Discount Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

Request for Discount: Nonprofit Organization

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by 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, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.
- (ii) 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.
- (iii) Is accompanied by documentation of its designation by the state, if requested by the Library .

Office Use: Documentation of State Designation Received Eligible for Discount Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and 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:

Date:

Requestor's Signature:

ATTACHMENT B

3a. Employee Labor Cost for Separating Exempt from Non-Exempt (Redacting):

(Fill this out if using Library employee. If contracted, use No. 3b instead).

The Library will not charge 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.

This fee is being charged because failure to do so will result in unreasonably high costs to the Library because of the nature of the request in this particular instance, specifically: _____

This is the cost of labor of a **Library employee**, including necessary review, directly associated with separating and deleting exempt from nonexempt information. This shall not be more than the hourly wage of the **Library's lowest-paid employee** capable of separating and deleting exempt from nonexempt information in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in **15-minute time increments**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no labor charge.*

Hourly Wage Charged: \$ _____ Charge per increment: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____ **OR**

Multiply the hourly wage by the percentage multiplier: _____%
(up to 50% of the hourly wage) and add to the hourly Wage for a total per hour rate. Charge per increment: \$ _____

Overtime rate charged as stipulated by requesting person (*overtime is not used to calculate fringe benefit cost*)

To figure the number of increments, take the number of minutes: _____, divide by _____-minute increments, and round down to: _____ increments
Enter below:

No. of increments x _____ =

3a. Labor Cost \$ _____

3b. Contracted Labor Cost for Separating Exempt from Non-Exempt (Redacting):

(Fill this out if using a contractor, such as the attorney. If using in-house employee, use No. 3a. instead)

The Library 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.

This fee is being charged because failure to do so will result in unreasonably high costs to the Library because of the nature of the request in this particular instance, specifically: _____

As the Library does not employ a person capable of separating exempt from non-exempt information in this particular instance, as determined by the FOIA Coordinator, this is the cost of labor of a **contractor** (i.e.: outside attorney), including necessary review, directly associated with separating and deleting exempt information from nonexempt information. This shall not exceed an amount equal to 6 times the state minimum hourly wage rate of _____ (*currently \$8.15*).

Name of contracted person or firm: _____

These costs will be estimated and charged in **15-minute time increments**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no labor charge.*

Hourly Wage Charged: \$ _____ Charge per increment: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____ **OR**

Multiply the hourly wage by the percentage multiplier: _____%
(up to 50% of the hourly wage) and add to the hourly Wage for a total per hour rate. Charge per increment: \$ _____

Overtime rate charged as stipulated by Requesting person (*overtime is not used to calculate fringe benefit cost*)

To figure the number of increments, take the number of minutes: _____, divide by _____-minute increments, and round down.
Enter below:

No. of increments x _____ =

3b. Labor Cost \$ _____

Subtotal Fees Before Waivers, Discounts or Deposits:

- Cost Estimate
- Bill

Estimated Time Frame to Provide Records:

_____ (days or date)

The time frame estimate is nonbinding upon the Library, but the Library is providing the estimate in good faith. Providing an estimated time frame does not relieve the Library from any of the other requirements of the Freedom of Information Act.

- 1. Labor Cost for Copying: \$ _____
 - 2. Labor Cost to Locate: \$ _____
 - 3a. Labor Cost to Redact: \$ _____
 - 3b. Contract Labor Cost to Redact: \$ _____
 - 4. Copying/Duplication Cost: \$ _____
 - 5. Mailing Cost: \$ _____
 - 6a. Copying/Duplication of Records on Website: \$ _____
 - 6b. Labor Cost for Copying Records on Website: \$ _____
 - 6c. Mailing Costs for Records on Website: \$ _____
- Subtotal Fees:** \$ _____

Waiver: Public Interest

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 Library 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.

- All fees are waived
- OR**
- All fees are reduced by: _____ %

Subtotal Fees After Waiver or Reduction: \$ _____

Discount: Indigence

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under the Freedom of Information Act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific assistance, **OR**
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

If a requestor is ineligible for the discount, the Library shall inform the requestor specifically for the reason for ineligibility in the Library's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- i. The individual has previously received discounted copies of public records from the Library twice during that calendar year, **OR**
- ii. The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The Library 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.

Eligible for Indigence Discount

Subtotal Fees After Discount (subtract \$20): \$ _____

Discount: Nonprofit Organization

A public record search must be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by 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, if the request meets **ALL** of the following requirements:

- i. Is made directly on behalf of the organization or its clients.
- ii. 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.
- iii. Is accompanied by documentation of its designation by the state, if requested by the Library.

Eligible for Indigence Discount

Subtotal Fees After Discount (subtract \$20): \$ _____

<p>Deposit: <u>Good Faith</u></p> <p>The Library may require a good-faith deposit <u>before providing the public records to the requestor</u> if the entire fee estimate or charge exceeds \$50.00, based on a good-faith calculation of the total fee. The deposit cannot exceed ½ of the total estimated fee. Percent of Deposit: _____%</p>	<p>Date Paid:</p> <p>_____</p>	<p>Deposit Amount Required:</p> <p>\$ _____</p>
<p>Deposit: <u>Increased Deposit Due to Previous FOIA Fees Not Paid In Full</u></p> <p>After a Library has granted and fulfilled a written request from an individual under the Freedom of Information Act, if the Library has not been paid in full the total amount of fees for the copies of public records that the Library made available to the individual as a result of that written request, the Library may require an increased estimated fee deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if ALL of the following apply:</p> <ul style="list-style-type: none"> (a) The final fee for the prior written request was not more than 105% of the estimated fee. (b) The public records made available contained the information being sought in the prior written request and are still in the Library's possession. (c) The public records were made available to the individual, subject to payment, within the time frame estimate given on Page 5 of this form. (d) Ninety (90) days have passed since the Library notified the individual in writing that the public records were available for pickup or mailing. (e) The individual is unable to show proof of prior payment to the Library. (f) The Library calculates a detailed itemization, as required under MCL 15.234, that is the basis for the current written request's increased estimated fee deposit. <p>A Library can no longer require an increased estimated fee deposit from an individual if ANY of the following apply:</p> <ul style="list-style-type: none"> (a) The individual is able to show proof of prior payment in full to the Library, OR (b) The Library is subsequently paid in full for the applicable prior written request, OR (c) Three hundred sixty-five (365) days have passed since the individual made the written request for which full payment was not remitted to the Library. 	<p>Date Paid:</p> <p>_____</p>	<p>Percent Deposit Required:</p> <p>_____%</p> <p>Deposit Required:</p> <p>\$ _____</p>
<p>Late Response <u>Labor Costs</u> Reduction</p> <p>If the Library does not respond to a written request in a timely manner as required under MCL 15.235(2), the Library must do the following:</p> <ul style="list-style-type: none"> (a) Reduce the charges for labor costs otherwise permitted by 5% for each day the Library exceeds the time permitted for a response to the request, with a maximum 50% reduction, if EITHER of the following applies: <ul style="list-style-type: none"> i. The late response was willful and intentional, OR ii. The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate 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 electronic mail, letter, or facsimile cover page. 	<p>Number of Days Over Required Response Time:</p> <p>_____</p> <p>Multiply by 5%</p> <p>= Total Percent Reduction:</p> <p>_____</p>	<p>Total Labor Costs</p> <p>\$ _____</p> <p>Minus Reduction</p> <p>\$ _____</p> <p>= Reduced Total Labor Costs</p> <p>\$ _____</p>
<p>The Public Summary of the Library's FOIA Procedures and Guidelines is available free of charge from: Website: _____ Email: _____ Phone: _____ Address: _____</p> <p style="text-align: center;">Request Will Be Processed, But <u>Balance Must Be Paid Before</u> Copies May Be Picked Up, Delivered or Mailed</p>	<p>Date Paid:</p> <p>_____</p>	<p>Total Balance Due:</p> <p>\$ _____</p>

ATTACHMENT C

Library: Keep original and provide copy, along with Public Summary, to requestor at no charge.

_____ Library, _____ County, MI

Extension Form

Notice to Extend Response Time for FOIA Request Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: _____ Date Received: _____ Check if received via: Email Fax Other Electronic Method
Date of This Notice: _____ Date delivered to junk/spam folder: _____
(Please Print or Type) Date discovered in junk/spam folder: _____

Name	Phone
Firm/Organization	Fax
Street	Email
City/Township	State Zip

Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis
Delivery Method: Will pick up Will make own copies onsite Mail to address above Email to address above
 Deliver on digital media provided by the Library : _____

Record(s) You Requested: (Listed here or see attached copy of original request) _____

We are extending the date to respond to your FOIA request for no more than 10 business days, until _____ (month, day, year).
Only one extension may be taken per FOIA request. If you have any questions regarding this extension, contact _____ at _____

Estimated Time Frame to Provide Records: _____ (days or date)
The time frame estimate is nonbinding upon the Library, but the Library is providing the estimate in good faith. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

Reason for Extension:

Signature of FOIA Coordinator:	Date:
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[This page left blank on purpose.]

ATTACHMENT D

Library: Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

_____ Library, _____ County, MI

Denial Form

Notice of Denial of FOIA Request

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: _____ **Date Received:** _____ **Check if received via:** Email Fax Other Electronic Method
Date of This Notice: _____ **Date delivered to junk/spam folder:** _____
(Please Print or Type) **Date discovered in junk/spam folder:** _____
Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis

Name	Phone
Firm/Organization	Fax
Street	Email
City/Township	State Zip

Delivery Method: Will pick up Will make own copies onsite Mail to address above Email to address above
 Deliver on digital media provided by the Library : _____

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____

All **OR** **Part** of your request for records has been denied. Please refer to this form for an explanation. If you have any questions regarding this denial, contact _____ at _____

Reason for Denial:

- 1. Exempt from Disclosure:** This item is exempt from disclosure under FOIA Section 13, Subsection _____ *(insert number)*, because: _____

- 2. Record Does Not Exist:** This item does not exist under the name provided in your request or by another name reasonably known to the Library. A certificate that the public record does not exist under the name given is attached. If you believe this record does exist, provide a description that will enable us to locate the record: _____

- 3. Redaction:** A portion of the requested record had to be separated or deleted (redacted) as it is exempt under FOIA Section 13, Subsection _____ *(insert number)*, because: _____

A brief description of the information that had to be separated or deleted: _____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the Library Board or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the Library has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. *(See back of this form for additional information on your rights.)*

Signature of FOIA Coordinator: _____

Date: _____

FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015

ATTACHMENT E

Library: Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

_____ Library, _____ County, MI

Denial Appeal Form

FOIA Appeal Form—To Appeal a Denial of Records

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: _____ **Date Received:** _____ **Check if received via:** Email Fax Other Electronic Method
Date of This Notice: _____ **Date delivered to junk/spam folder:** _____
(Please Print or Type) **Date discovered in junk/spam folder:** _____

Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis

Name	Phone
Firm/Organization	Fax
Street	Email
City/Township	State Zip

Delivery Method: Will pick up Will make own copies onsite Mail to address above Email to address above
 Deliver on digital media provided by the Library : _____

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____

Reason(s) for Appeal:

The appeal must identify the reason(s) for the denial. You may use this form or attach additional sheets:

Requestor's Signature: _____ **Date:** _____

Library Response:

The Library Board must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension. The Library Board is not considered to have received this appeal until the first regularly scheduled meeting of the Library Board following submission of this appeal.

Library Board Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until _____ (month, day, year). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: _____

If you have any questions regarding this extension, contact: _____

Library Board Determination:

Denial Reversed Denial Upheld Denial Reversed in Part and Upheld in Part

The following previously denied records will be released: _____

Notice of Requestor's Right to Seek Judicial Review

With or without the Library Board's determination on this appeal, you are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the Library has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (See back of this form for additional information on your rights.)

Signature of FOIA Coordinator: _____ **Date:** _____

FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015.

ATTACHMENT F

Library: Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

_____ Library, _____ County, MI

Fee Appeal Form

FOIA Appeal Form—To Appeal an Excess Fee

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, *et seq.*

Request No.: _____ **Date Received:** _____ **Check if received via:** Email Fax Other Electronic Method
Date of This Notice: _____ **Date delivered to junk/spam folder:** _____
(Please Print or Type) **Date discovered in junk/spam folder:** _____
Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis

Name	Phone
Firm/Organization	Fax
Street	Email
City/Township	State Zip

Delivery Method: Will pick up Will make own copies onsite Mail to address above Email to address above
 Deliver on digital media provided by the Library : _____

Record(s) You Requested: *(Listed here or see attached copy of original request)* _____

Reason(s) for Appeal:

The appeal must specifically identify how the required fee(s) exceed the amount permitted. You may use this form or attach additional sheets:

Requestor's Signature: _____ **Date:** _____

Library Board Response:

The Library Board must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension. The Library Board is not considered to have received this appeal until the first regularly scheduled meeting of the Library Board following submission of this appeal.

Library Board Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until _____ *(month, day, year)*. Only one extension may be taken per FOIA appeal.
Unusual circumstances warranting extension: _____

If you have any questions regarding this extension, contact: _____

Library Board Determination: Fee Waived Fee Reduced Fee Upheld

Written basis for Library determination:

Notice of Requestor's Right to Seek Judicial Review

You are entitled under the Library Board's written Procedures & Guidelines and Section 10a of the Michigan Freedom of Information Act, MCL 15.240a to appeal a FOIA fee to the Library Board if you believe the fee exceeds the amount permitted under the Library's written Procedures & Guidelines or the Freedom of Information Act. Following the Library Board's determination on the appeal, you are then entitled to commence an action in the Circuit Court for a fee reduction within 45 days after receiving the notice of the required fee or a determination of an appeal to the Library Board. If a civil action is commenced in court, the Library is not obligated to complete processing the request until the court resolves the fee dispute. If the court determines that the Library required a fee that exceeded the permitted amount, the court shall reduce the fee to a permissible amount. *(See back of this form for additional information on your rights.)*

Signature of FOIA Coordinator: _____ **Date:** _____

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.

Sec. 10a.

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body 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 under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Waive the fee.

(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section 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. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

History: Add. 2014, Act 563, Eff. July 1, 2015