MICHIGAN DEPARTMENT OF CORRECTIONS **POLICY DIRECTIVE**	EFFECTIVE DATE 03/31/2016	NUMBER 01.06.110
SUBJECT FREEDOM OF INFORMATION ACT - ACCESS TO DEPARTMENT PUBLIC RECORDS	SUPERSEDES 01.06.110 (07/01/2015)	
	AUTHORITY 442 PA 1976, MCL 15.231 et seq., MCL 4.359, 28.730, 423.504, 762.14, 771.14, 780.623, 791.229, 791.230a; Administrative Rule 28.5208, Booth v MDOC, Court of Claims, No. 324319, June 9, 2015	
	PAGE 1 OF 8	

POLICY STATEMENT:

All written requests for public records in the Department's possession shall be processed under the Michigan Freedom of Information Act (FOIA) as set forth in this policy.

RELATED POLICY:
02.01.140 Human Resource Files

POLICY:

DEFINITIONS

A. Public Record - A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This includes but is not limited to photographs, photocopies, drawings, video and audio tapes, computer data or documents retained on a computer, CD, DVD, and any other means of recording or retaining information. It does not include computer software.

GENERAL INFORMATION

B. The FOIA requires full disclosure of public records unless those records are exempted under the Act. All public records in the Department's possession are subject to FOIA but may be exempt from disclosure. This includes public records in the Department's possession that are created by another agency (e.g., Department of Community Health, Federal Bureau of Prisons, jails) or by an entity under contract with the Department. However, public records that are possessed only by another agency or an entity under contract with the Department are not subject to a FOIA request received by the Department.

C. Except if the request is from a prisoner and as set forth in Paragraph D, any written request for a public record is considered to be a FOIA request unless the requestor specifically states in writing that the request is not being made under FOIA. A written request for information also is considered to be a FOIA request if the request indicates it is being submitted under FOIA. A written request includes a writing transmitted by facsimile machine, e-mail, or any other electronic means.

D. The following are generally not considered to be FOIA requests unless the requestor specifically states in writing that the request is being made under FOIA:

1. A request from a federal, state, or local governmental agency, including a court or law enforcement agency. A request from the Department of Attorney General shall be referred to the appropriate Litigation Coordinator.

2. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents). All discovery requests shall be referred to the appropriate Litigation Coordinator as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities."

3. A request for employee personnel information which the employee has authorized to be released (e.g., employment verification to a lending institution or prospective employer). Such requests shall be referred to the appropriate Human Resource office for processing. Employees may have access to their personal records in accordance with Civil Service rules.

4. A request from a collective bargaining unit made pursuant to its contract. Such requests shall be referred to the appropriate Human Resource office for processing.

5. Documents required to be produced by a subpoena or other court order. Such requests shall be referred to the appropriate Litigation Coordinator.

6. A request from an educational institution for a transcript of a prisoner's education record.

7. A request from a news media representative unless the request is for copies of several Department documents or unless the request states that it is a FOIA request. The Public Information Officer or designee, through the Department's FOIA Coordinator, shall be consulted on any questions which may arise in processing a request from a news media representative.

8. A request from legislative staff unless the request is for copies of several Department documents. The Public Information Officer or designee, through the Department's FOIA Coordinator, shall be consulted on any questions which may arise in processing a request from legislative staff.

E. Department employees are entitled to make requests under FOIA. However, such requests shall not be made while on Department time or while using Department resources, including its computers and office supplies. Any known misuse of Department time or resources is to be reported to the employee's supervisor.

PRISONER REQUESTS FOR DOCUMENTS

F. Under MCL 15.231(2) and 15.232(c), prisoners are not entitled to make FOIA requests. Prisoners also have no right to appeal or file suit under FOIA if a request for public records is denied. Therefore, prisoner requests for public records shall not be processed as FOIA requests but instead responded to by staff in the same manner as any other correspondence, with requested documents provided as appropriate.

G. Prisoners may receive copies of documents about their medical care as set forth in OP 03.04.108-B "Prisoner Access to Medical Records."

H. Upon request, a prisoner shall be provided with a copy of the hearing investigation compiled for his/her Class I misconduct hearing, except for those documents which have been determined by the hearing officer to be confidential. Such requests shall be made to the hearing investigator at the facility where the hearing occurred.

FOIA COORDINATORS

I. The Manager of the FOIA Section in the Office of Legal Affairs is the FOIA Coordinator for the Department. The Department's FOIA Coordinator or designee is responsible for responding to requests received in Central Office and requests for documents in prisoner files in storage, except for the prisoner health record. Requests for prisoner health records are to be submitted to Duane L. Waters Health Center Medical Records at 3857 Cooper Street, Jackson, MI 49201.

J. Local FOIA Coordinators shall be designated to act on behalf of the Department FOIA Coordinator to accept and process FOIA requests received at the following locations:

1. At each Correctional Facilities Administration (CFA) institution, as identified by the Warden. A separate FOIA Coordinator may be identified for the Record Office and Human Resource Office.

2. At each CFA Assistant Deputy Director's (ADD'S) office in Jackson and Kinross.

3. At each Bureau of Health Care Services (BHCS) location, the Jackson Health Care Office, the Kinross Health Care Office and Mental Services Office as identified by the appropriate Assistant Health Services Administrator and at Duane L. Waters Health Center (DWH) as identified by the Warden of the Charles E. Egeler Reception and Guidance Center (RGC). This shall include a local FOIA coordinator for requests for records in prisoner/parolee health records in storage. Other local health care FOIA coordinators may be identified as needed by the BHCS Administrator or designee.

4. At each Field Operations Administration (FOA) Regional and Area Office, as identified by the appropriate Regional Administrator or Area Manager.

5. At any Residential Reentry Program facility, as identified by the CFA Deputy Director or designee.

K. Each FOIA Coordinator shall maintain monthly statistics of the number of FOIA requests received and processed, including the amount of fees billed and collected. The local FOIA Coordinator shall forward the statistics to the Department FOIA Coordinator or designee at the end of each calendar year. The Department's FOIA Coordinator shall ensure Department-wide statistical reports are compiled at least annually.

L. Each FOIA Coordinator shall maintain a copy of all FOIA requests received, responses sent and all responsive records. These documents shall be retained in accordance with the Department's Retention and Disposal Schedule, one calendar year from the date of the last action. Thereafter, provided that there is no pending litigation regarding the FOIA request, the records will be destroyed.

M. A Response to A Request for Public Records - FOIA form (CSH-479) shall be used to respond to all FOIA requests unless otherwise directed by the Department FOIA Coordinator or designee. A written notice responding to the request shall be provided to address issues not covered by the form. Anytime fees are assessed, the fees will be delineated on a separate FOIA Fee Calculation Form (CFJ-564).

N. The local Litigation Coordinator shall be contacted to determine if there is pending litigation regarding the subject of any FOIA request. If there is pending litigation, the Department FOIA Coordinator shall be contacted for directions regarding how to proceed. A copy of the request and the response shall be forwarded to the local Litigation Coordinator as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities."

O. Questions regarding FOIA requests shall be directed to the Department's FOIA Coordinator or designee.

PROCESSING FOIA REQUESTS

P. A FOIA request received by an employee shall be referred before the end of the business day to the FOIA Coordinator at the employee's work site. The FOIA Coordinator shall respond to the request within five business days after receipt by the Department. A request received by facsimile machine or e-mail is considered received on the next business day following the date of transmission. In the response, the FOIA Coordinator shall either:

1. Grant the request;

2. Deny the request;

3. Grant the request in part and deny the request in part; or

4. Take a ten business day extension. In such cases, the requestor shall be notified in writing of the reason for the extension and the expiration date of the extension. The MDOC cannot issue more than one notice of extension.

Q. The FOIA Coordinator shall review the request and determine which records in the Department's possession are responsive to the FOIA request. The exact name of the record is not required to be provided if it can reasonably be determined by the description provided what is being requested. A document is not required to be created to respond to a FOIA request if the record requested does not exist.

R. The FOIA Coordinator shall review the documents responsive to the request to ensure information exempt from disclosure is not provided. If only a portion of a document is exempt, the exempt portion is to be redacted and only the non-exempt portion of the document disclosed. The FOIA Coordinator shall ensure redacted portions of a document are not legible on the copy provided.

S. Only those exemptions authorized under FOIA shall be used. If more than one exemption applies to a particular request, all relevant exemptions should be indicated when responding to a FOIA request unless the document is statutorily exempt from disclosure. An explanation regarding what was exempted and the reason for the exemption shall be provided.

T. If the MDOC does not respond to a written request in a timely manner, it shall reduce the charges for labor costs by 5% for each day the response is late with a maximum 50% reduction if the late response was willful and intentional or if the written request included language that conveyed a request for information within the first 250

words of the written document. For any questions regarding fee calculations, contact the Department's FOIA Coordinator.

REQUESTS FOR EMPLOYEE PERSONNEL RECORDS

U. Pursuant to MCL 791.230a, the home addresses, home telephone numbers, clock numbers, employee identification numbers and personnel records of Department employees are exempt from disclosure under FOIA. For purposes of this exemption, personnel records include all records maintained regarding an employee as a result of employment with the Department. This includes but is not limited to personnel files, investigatory records relating to an employee, AIPAS records, certain complaints filed by or against an employee, time and attendance records, and work location.

REQUESTS FOR INFORMATION IN FILLING DEPARTMENT POSITIONS

V. Although most records retained by the Department regarding the filling of Department positions are exempt from disclosure, each request must be reviewed to determine what records and/or information may be disclosed. Job posting information belongs to the Department of Civil Service. Information that may be released under FOIA unless otherwise exempt from disclosure (e.g., telephone numbers, home addresses, Social Security numbers) includes but is not limited to the following:

1. The names of all applicants.

2. The resume of the requestor, assuming s/he applied for the position (Does not apply if a current MDOC employee).

3. The names of those applicants interviewed for the position, ensuring they are not presented in the order in which they were ranked (Does not apply if a current MDOC employee).

4. The job posting.

FOIA EXEMPTIONS

W. The exemptions allowed under FOIA are expressed in general language which must be applied to the specific public record requested. It is impractical to list all information or documents that may be exempt from disclosure. Therefore, local FOIA Coordinators must be familiar with all FOIA exemptions. Often, more than one exemption may apply. FOIA responses must include all applicable exemptions.

General Exemptions

X. The following are some of the FOIA exemptions which are most frequently taken and examples of information to which the exemptions may apply:

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. Section 13 (1)(a). The purpose of exemptions is to balance the policy of full disclosure with any significant privacy interests favoring nondisclosure.

   Examples: Home addresses and home telephone numbers; emergency contact information; driver license numbers; Social Security numbers; victims' requests to receive information pursuant to PD 01.06.120 "Victim Notification" and the Department's response unless the requestor is the victim; fingerprint cards; resumes of unsuccessful job applicants except for the resume of the requestor.

2. A public record that, if disclosed, would prejudice the ability to maintain the physical security of a correctional facility unless the public interest in disclosure outweighs the public interest in non-disclosure. Section 13(1)(c).

   Examples: Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques; Special Problem Offender Notice; movement plans; Security Threat Group designations and related documentation; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device; document determined

to be confidential by a hearing officer at a hearing conducted pursuant to MCL 791.252.

3. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, or other privilege recognized by statute or court rule. Section 13(1)(h).

   Examples: Psychiatric and psychological information unless a release is provided; medical records; however, the request shall be forwarded to the Health Unit Manager for processing under the Medical Records Access Act if a release is provided.

4. Communications and notes of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency decision of policy or action. This exemption only applies if the public interest of encouraging frank communications between officials and employees clearly outweighs the public interest in disclosure. Section 13(1)(m).

   Examples: A Joint Evaluation Committee (JEC) recommendation before the Department of Technology, Management and Budget award is made.

5. Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body. Section 13(1)(u).

   Examples: Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device.

6. Records or information relating to a civil action in which the requesting party and the Department are parties. Section 13(1)(v). This includes civil court actions in which the Department is representing an employee being sued.

7. Information or records that would disclose the Social Security number of an individual. Sections 13(1)(d), specifically MCL 445.85 and 13 (1)(w). This information shall not be disclosed even if a release is provided.

Statutory Exemptions

Y. Section 13(1)(d) of FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. When using this exemption, it is necessary to identify the specific statute authorizing the exemption. The following are examples of information exempt under Section 13(1)(d) and the applicable statute:

1. Records and reports of investigations made by a probation agent, including presentence investigation reports. (MCL 791.229).

2. The address and telephone number of a victim who has requested to receive information pursuant to PD 01.06.120 "Victim Notification." (MCL 780.769).

3. Victim statements submitted for consideration by the Parole Board pursuant to MCL 780.771.

4. Any information of the disposition of criminal charges and assignment as a youthful trainee unless youthful trainee status is revoked and the offender is subsequently convicted of the offense. (MCL 762.14).

5. Any information received through the Law Enforcement Information Network (LEIN), including records of criminal charges which did not result in a conviction. (MCL 28.214).

6. Quality assurance reviews (e.g., “peer reviews”) conducted by BHCS. (MCL 331.533).

7. A report prepared and recommendations made by the Office of the Legislative Corrections Ombudsman and submitted to the Legislative Council pursuant to an investigation. (MCL 4.359).

8. A record ordered to be set aside ("expunged") if the Department has received notice of the set aside. (MCL 780.623).

9. Documents and information pertaining to an offender's registration and change of address notification pursuant to the Sex Offenders Registration Act. (MCL 28.730).

10. Information regarding the diagnosis, prognosis, or treatment of an offender involved in a substance abuse education or treatment program, unless a release is provided by the offender which specifically authorizes release of this information. (48 USC 290dd-3).

FEES

Z. All FOIA requestors shall be charged 10 cents per page for each written document provided plus the actual cost of postage unless expedited shipping or insurance is stipulated by the requestor. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor, the cost of the search, examination, review, and the deletion and separation of exempt from non-exempt information. The actual cost of duplication shall be charged for copies of non-written documents, such as computer discs and non-paper physical media. If a portion of a document must be redacted and the document recopied prior to production, the requestor shall be charged only for the copy provided.

AA. A fee may not be charged for the cost of search, review, examination, and the separation of exempt from non-exempt information unless failure to charge the fee would result in an unreasonably high cost to the Department. If assessed, the fee shall be charged at the hourly wage of the lowest-paid employee capable of searching for, locating and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially cover the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor. Labor costs are to be estimated and charged in increments of 15 minutes or more, with all partial time rounded down. Such fees are not to be charged without first contacting the Department's FOIA Coordinator or designee for approval and direction on how to proceed.

BB. The Department may waive or reduce fees if the Department determines it is in the public interest to do so or if providing the requested documents primarily benefits the general public for reasons identified by the requestor. A fee that totals $10.00 or less, including postage, shall be waived. Other fees shall be waived or reduced pursuant to this paragraph only with approval of the Department FOIA Coordinator or designee.

CC. A requestor shall not be charged for the first $20.00 of fees assessed per request, including any fees waived under Paragraph BB for either of the following:

(a) Upon submission of a current affidavit verifying that s/he is receiving public assistance or, if not receiving public assistance, sufficiently stating facts showing an inability to pay the cost due to indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the Fee Calculation form. If the requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for the ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:

- 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 MDOC 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.
- The requestor has previously received discounted copies of public records under this subsection from the MDOC twice during the calendar year.

(b) A nonprofit organization formally designated by the State to carry out activities and the protection and advocacy for individuals with mental illness if the requestor meets all of the following requirements:

- 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.
- Is accompanied by documentation of its designation by the State, if requested by the public body.

Questions regarding whether fees should be waived pursuant to this paragraph are to be directed to the Department's FOIA Coordinator or designee.

DD. Whenever a fee is charged, the FOIA response shall specify the amount owed, the Department's best efforts estimate of how long it will take to provide the records to the requestor and indicate that the records will be provided after payment is received in full. If the amount owed exceeds $50.00, exclusive of any waived amounts, a 50% good faith deposit may be required before processing begins. Once the good faith deposit is received, the request shall be processed. Upon completion of processing, the requestor shall be billed for the balance owed, which must be paid before the documents are provided to the requestor. A requestor who does not pay the balance owed will not be provided with the documents requested.

INSPECTION

EE. When inspection of public records is requested in writing under FOIA, a reasonable opportunity for inspection of the non-exempt records must be allowed during normal business hours. The local FOIA Coordinator must ensure that any exempt information is redacted prior to the inspection.

FF. A fee shall be charged a requestor to inspect public records only as set forth below:

1. For the search, review, examination, and the separation of exempt from non-exempt information as set forth in Paragraph AA.

2. With approval of the Department FOIA Coordinator or designee, for the time spent by staff monitoring an inspection that is necessary to protect the original record and to prevent excessive and unreasonable interference with the discharge of Department functions. The fee shall be charged at the hourly rate of the lowest-paid employee capable of monitoring the inspection. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially cover the cost of fringe benefits.

3. With approval of the Department FOIA Coordinator or designee, for copies necessary to protect the original record as provided for under Section 3(3) of FOIA, MCL 15.233.

4. For a copy made in order to redact a portion of the original that is exempt.

APPEALS UNDER FOIA

GG. A requestor whose FOIA request has been denied in full or in part may appeal the denial to the Director. The appeal must be submitted in writing and is to be mailed to attention of the Administrator of the Office of Legal Affairs. The appeal must be specifically identified as a FOIA appeal and state the reasons for reversal of the denial. The Director will respond to the appeal within 10 business days.

HH. A requestor may appeal the Department's final determination to deny a FOIA request by commencing an action in the Court of Claims within 180 calendar days after that final determination is made.

II. A requestor may appeal the FOIA fees by submitting 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/guidelines. The appeal must be submitted in writing and is to be mailed to attention of the Administrator of the Office of Legal Affairs. The Director will respond to the appeal within 10 business days.

JJ. A requestor may commence a civil action in the Court of Claims for a fee reduction only after having gone through the Department's fee appeal process. The action must be filed within 45 days after receiving the final determination from the Director.

KK. For either appeal, the Director may, under unusual circumstances, issue a written notice taking a 10 business day extension in order to respond to the appeal.

PROCEDURES

LL. Wardens and the FOA Deputy Director shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive within 60 calendar days after the effective.

AUDIT ELEMENTS

MM. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy pursuant to PD 01.05.100 “Self-Audits and Performance Audits."

APPROVED: HEW 03/28/2016