



DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURES

**SUBJECT: DISCLOSURE OF PUBLIC RECORDS:
FREEDOM OF INFORMATION ACT REQUESTS**

Number: 01-006

Date: November 7, 1997

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Revision: June 4, 2009

ISSUE:

Michigan's Freedom of Information Act, 1976 PA 442, as amended (FOIA), prescribes how and when state government must respond to requests for the disclosure of public records. The Department of Environmental Quality (DEQ), as a public body, is subject to this statute. The following policy and procedures govern FOIAs.

DEFINITIONS:

- "Correspondence" means any written communication regardless of transmission, such as letter, facsimile, or electronic mail.
- "FOIA" means the Freedom of Information Act, 1976 PA 442, as amended.
- "FOIA Coordinator" means the individual designated by a public body in accordance with Section 6 of the FOIA to accept and process requests for public records. The FOIA coordinator serves as the DEQ resource for questions regarding public disclosure of records, the liaison with the Department of Attorney General for legal guidance relating to public disclosure of records, and the authorized individual to issue denials of requests for exempt public records and to approve requests for fee waivers.
- "FOIA Liaison" means the person(s) designated to serve as the FOIA liaison in each bureau/division/office/district. FOIA liaisons will generally be responsible for the fulfillment of requests for public disclosure of records.
- "Partial Denial" means part of the FOIA that describes information that may be exempted under the FOIA or other state or federal law, or shall not be disclosed in compliance with another state or federal law or regulation.
- "Protection of Records" means a public body may make reasonable rules necessary to protect its public records from loss, unauthorized alteration, mutilation, or destruction. In granting a request to inspect public records, the DEQ has established rules to prevent excessive and unreasonable interference with the discharge of its functions.
- A "Public Record" is any writing prepared, owned, used, in the possession of, or retained by the DEQ in the performance of its official functions. Records may be in any form, including typewritten, handwritten, electronic (i.e., e-mail), photocopied, tape recorded or video recorded, maps, pictures, and symbols, and any other means of recording or retaining meaningful content. Under the FOIA, a public record does not include computer software.
- "Waiver of Fee" means a public record may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest. The FOIA coordinator determines when a waiver of fee is appropriate.
- "Written Request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

POLICY:

The DEQ encourages public participation in, and knowledge of, its decision-making processes. This includes providing public access to DEQ records as required under the FOIA. In order to implement the FOIA, the DEQ establishes the following procedures.

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GENERAL PROCEDURES:

Response Time: The FOIA requires the DEQ to respond in writing. The five-business-day time period begins the first full business day after the request reaches any employee in a DEQ office. Within the five-business-day time period the DEQ must (a) grant the request; (b) deny the request; (c) grant in part and deny in part; or (d) take a ten-business-day extension of time to respond. The FOIA Liaison may obtain a ten-business-day extension in which to respond to a request requiring more time by sending the requester a letter that specifies the reason(s) for the extension and the date by which the DEQ will issue its written notice of disclosure determination (EQP1047eFOIALiaison10-dayExtension).

Contact with the Department of Attorney General: The FOIA Liaisons should not contact the Department of Attorney General for assistance; all FOIA-related contacts with the Department of Attorney General should be made through the FOIA Coordinator.

Information Exempt from Disclosure: Examples of exemptions from disclosure permitted by the FOIA include records that, if released, would (1) result in a clearly unwarranted invasion of an individual's privacy, such as home addresses and other personal identifiers, bank account numbers, credit card numbers, social security numbers; (2) disclose records or information specifically described and exempted from disclosure by statute; (3) compromise or interfere with law enforcement proceedings; (4) interfere with a person's right to a fair trial or impartial administrative adjudication; (5) disclose the identity of a confidential law enforcement source; (6) compromise attorney-client privilege; (7) compromise a competitive bid process; (8) disclose test questions, answers, or scoring keys; or (9) disclose medical information of an identified individual. See Section 13 of the FOIA for the act's exemption provisions.

Specific DEQ procedures for responding to requests for information follow:

PROCEDURE A: Responding to a Request for Copies of DEQ Records

<u>Responsibility</u>	<u>Action</u>
Any DEQ Employee	1. Receives a FOIA. 2. Date stamps FOIA. 3. Immediately forwards the FOIA to the FOIA Liaison.
FOIA Liaison	4. Log FOIA.
FOIA Liaison and/or Any DEQ Employee	5. Reviews the request to determine if the request can be filled exclusively by their bureau/division/office/district. A. If yes, proceeds to Step 7. B. If no, and if the request requires the involvement of another bureau/division/office/district, and/or department, faxes the written request to the FOIA Coordinator.
FOIA Coordinator	6. Reviews the request to determine what bureau/division/office and/or department may have records responsive to the request. A. If the request is for records maintained exclusively in another Department, issues a Records Don't Exist denial letter (EQP1048aRecordsDontExist).

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- B. If the DEQ may have records responsive to the request:
 - 1. Issues a ten-business-day extension of time letter indicating the bureau/division/office the request is being forwarded to for processing (EQP1440FOIACoordinator10-dayExtension).
 - 2. Routes FOIA as a portable document format (PDF) file to bureau/division/office FOIA Liaison(s). In the upper right hand corner of the FOIA PDF file, places the DEQ FOIA tracking number, due date, and bureau/division/ office(s) responsible for responding to the FOIA.

FOIA Liaison and/or
Any DEQ Employee

- 7. Reviews the request to determine if the requested record exists.
 - A. If yes, then proceed to Step 8.
 - B. If no, send correspondence indicating Records Don't Exist (EQP1048aRecordsDontExist).
- 8. Reviews the request with program staff to determine if the record is located at the bureau/division/office/district or whether the record is exempt.
 - A. If the entire record is located in the bureau/division/ office/district, sends the request to the appropriate staff for processing. Proceeds to Step 9.
 - B. If the FOIA is received in the bureau/division/office and it is determined that records may also be located in the district, the bureau/division/office FOIA Liaison routes FOIA to district for processing. The bureau/division/office FOIA Liaison may route FOIA as PDF file to district FOIA Liaison(s).
- 9. Reviews the request to determine if the request is specific enough to locate the desired record (see FOIA Section 3). If the request is so broad that it encompasses a large volume of information; or if the request is not specific enough:
 - A. Estimates the total cost to fulfill the request, and if the total cost is \$100 or more, prepares the FOIA Good Faith Deposit invoice. Refer to Step 14 for further information on calculating total costs.
 - B. Contacts the requester to clarify the request.
 - 1. When the FOIA Liaison and/or any DEQ Employee has a conversation with the requester that changes the original FOIA, prepares correspondence to the requester stating how the request is amended (EQP1583FOIACChange Request).
 - 2. If the requester cancels the FOIA after a conversation with the FOIA Liaison, prepares correspondence to Confirm Request Cancellation (EQP1444FOIA Canceled).
NOTE: The correspondence to Confirm Request Cancellation is to be used only for those FOIAs received directly in the bureau/division/office/district.

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FOIA Liaison, cont.

10. Reviews request to determine whether requested record is exempt from disclosure.
 - A. If the record is part of ongoing litigation and the requester is named in the lawsuit, contact the FOIA Coordinator immediately.
 - B. If the requester is not named in the lawsuit or if the record is not part of ongoing litigation, proceeds to Step 10.C.
 - C. If all or part of the requested record appears to be exempt from disclosure (see description of exempt records in General Procedures), prepares and sends full or partial denial letter to the FOIA Coordinator for signature.
 1. The following templates provide examples for partial denial letters:
 - a. EQP1049edenial13-1-g – attorney-client privilege.
 - b. EQP1049edenial13-1-m – notes and communications within a public body.
 - c. EQP1049edenial – all other denials.
 - D. If the requested record is not exempt from disclosure, proceeds to Step 13.

FOIA Coordinator

11. Signs full or partial denial letter and returns to the bureau/division/office/district, as necessary.

FOIA Liaison and/or
Any DEQ Employee

12. Upon receipt of final payment, sends signed partial denial letter along with requested records.
13. If the requester wants to review the records with an on-site appointment, the requester is charged for the following costs (refer to FOIA Estimates Worksheet):
 - A. Copying/scanning of the records.
 - B. Staff time for the search, retrieval, examination, review, and separation of exempt and nonexempt information.
 - C. If a staff member is necessary to monitor a requester's inspection of records, the requester is charged for staff time utilizing the clerical rate. Staff members should be present at record inspections, if (a) the integrity of the file may be in question, or (b) division/office/district procedures require it.

NOTE: On-site appointments should be arranged with the appropriate staff to ensure that the requested records and staff are available.
14. Estimates and calculates the fee to be charged for providing the requested record.
 - A. Estimates and calculates the number of hours required to search for, retrieve, examine, review, and separate exempt and nonexempt information, and mail the requested material.

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- B. Multiplies the number of hours calculated in 14.A. by the hourly wage of the lowest-paid employee in the agency capable of performing the aforementioned tasks. The hourly wage rates are specified in the FOIA Estimates Worksheet.
 - C. Adds the cost of copying/scanning (includes staff time and paper) to the amount calculated in Step 14.B. Any copying/scanning charges for "off-site" copies are to reflect the actual costs.
NOTE: "Off-site" copies/scanning are those that require duplication by a private copy center. Any records larger than 8 ½" x 11", such as maps, photographs, or color copies, may require "off-site" copying/scanning.
 - D. Adds the cost of postage to the amount calculated in Step 14.B. and C. This is the estimated total cost to fulfill the FOIA.
15. Prepares EQP1046eFOIAForm for billing or issues invoice (if authorized).
- A. If the cost is less than \$100, prepare billing or invoice pursuant to bureau/division/office procedure.
 - 1. Do not mail documents until receipt of the final payment.
 - 2. Outstanding invoices will be reviewed pursuant to bureau/division/office procedures.
 - B. If the cost is \$100 or more, FOIA Liaison must send billing or invoice, pursuant to bureau/division/office procedure, requesting a Good Faith Deposit of one-half of the total estimated fee prior to processing the request.
NOTE: New FOIAs must be processed even if the requester has outstanding invoices.
 - 1. If a FOIA is cancelled after receipt of the Good Faith Deposit, the actual costs incurred up to the date of cancellation will be subtracted from the Good Faith Deposit. The remaining balance of the Good Faith Deposit will be refunded.
 - 2. After mailing the Good Faith Deposit, no additional follow-up is necessary.
16. Upon receipt of the Good Faith Deposit, duplicates requested records, prepare, and send final invoice, pursuant to bureau/division/office procedure.
- A. After the final invoice is mailed, no additional follow-up is necessary.
 - B. Outstanding invoices will be reviewed pursuant to bureau/division/office procedures.
 - C. Upon non-payment of outstanding invoice, documents may be disposed of one year after date of invoice.
17. Upon receipt of final payment for all FOIAs, mails records.

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FOIA Coordinator

18. Review and update hourly wage and per-page rates on an annual basis, as necessary.

PROCEDURE B: FOIA Record Keeping

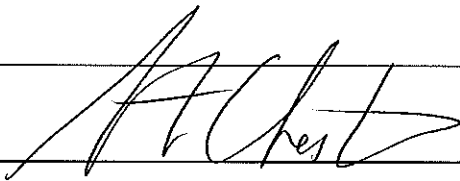
Responsibility

Action

FOIA Coordinator and/or FOIA Liaison

1. Shall keep a copy of all written requests for public records on file for no less than one year.

Approved: _____



Date: _____

6-4-09