

**State of Michigan
Independent Citizens Redistricting Commission (MICRC)
FOIA Procedures and Guidelines
and
State of Michigan
Independent Citizens Redistricting Commission (MICRC)
Written Public Summary of MICRC FOIA Procedures and Guidelines**

Adopted February __, 2021

MICRC FOIA PROCEDURES AND GUIDELINES

A. Purpose

These Procedures and Guidelines are adopted in accordance with the Michigan Freedom of Information Act (“the Act” or “FOIA”), Public Act 442 of 1976, being MCL 15.231 *et seq.*, and pursuant to the MICRC Rules of Procedure, *Section 13.0, Public Access to Commission Records*, dated February 4, 2021. The Michigan Independent Citizens Redistricting Commission (MICRC) is a public body required by law to provide public records to persons requesting public records unless those records are exempt from public disclosure by the Act or some other statute. These Policies and Procedures are intended to ensure uniformity of practice and procedures in the release of public records and in the fees charged for the cost of processing a request for public records.

B. Appointment of a FOIA Coordinator.

In accordance with Section 6 of the Act, being MCL 15.236, the Executive Director of the MICRC has delegated the responsibilities of the role of FOIA Coordinator to the General Counsel of the MICRC.

C. Submission of a FOIA Request.

Written FOIA requests or the completed Michigan Independent Citizens Redistricting Commission (MICRC) FOIA request form available at [insert link to form](#) can be submitted in one of the following ways:

- Email: ICRC-FOIA@Michigan.gov; or
- Mail:

Michigan Independent Citizens Redistricting Commission (MICRC)
Attn: FOIA Coordinator
P.O. Box 30318
Lansing, MI 48909

All FOIA requests are required to include a full name, phone number and mailing address. Verbal requests for public records are not accepted.

D. Immediately Forward FOIA Request.

Any individual associated with the MICRC, being individual Commissioners or staff who receives a written request for a public record must immediately forward that request to the FOIA Coordinator. If an individual receives a written request for a public record that is delivered to a spam or junk-mail folder, that individual must record the date and time the written request is delivered to the spam or junk-mail folder and date and time the individual first becomes aware of the written request. The individual must forward those dates and times to the FOIA Coordinator with the written request.

E. FOIA Request Response Time

In accordance with Section 5 of the Act, being MCL 15.235, unless otherwise agreed to in writing by the person making the FOIA request, within five (5) business days of the receipt of the FOIA request by the FOIA Coordinator, the MICRC, through its FOIA Coordinator, shall provide a written response to the person who submitted the FOIA request. The MICRC may extend the time for responding by an additional ten (10) business days by notifying the requesting person in writing of the reason for the extension and the new due date. Due to the short statutory time period within which the MICRC must issue a written notice in response to the FOIA request, it is imperative that there be no delay in complying with these FOIA procedures and guidelines.

F. Response to a FOIA Request

The MICRC will provide copies of these Procedures and Guidelines and the written public summary of such with each written response or provide a link to an online version of these documents. If a request is denied, in full or in part, the MICRC will provide the requester an explanation of the basis of the denial under the Act, being MCL 15.235(5), and give notice to the requester of his or her remedial rights.

G. Notification of FOIA Request

Upon receipt of a FOIA request, the MICRC's FOIA Coordinator will email the individual(s) or office(s) that might possess records responsive to the FOIA request.

H. Assessment of Fees for a FOIA Request

The Act permits the MICRC to charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from non-exempt material, but only if the failure to charge a fee would result in unreasonably high costs to the MICRC because of the nature of the request in the particular instance and the MICRC specifically identifies the nature of these unreasonably high costs.

The following fee guidelines for calculating labor and material costs incurred in processing FOIA requests are established pursuant to the Act, being MCL 15.234:

1. Fees will be uniform and not dependent upon the identity of the requesting person.
 2. Fees will be itemized using a detailed itemization of fees and will include:
 - Labor costs for the search, location, and examination of public records will be calculated using the hourly wage of the MICRC's lowest paid employee capable of conducting the search, location, and examination, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - Labor costs for the review of public records and separation and deletion of exempt from non-exempt material will be calculated using the hourly wage of the MICRC's lowest paid employee capable of conducting the review and separation and deletion of exempt from non-exempt material, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - Non-paper physical media costs will be calculated using the actual and most reasonably economical cost of computer discs, computer tapes, and other digital and similar media provided by the MICRC.
 - Duplication and publication costs will be calculated using the actual total incremental cost of necessary duplication or publication of a public record, not including labor. The actual and incremental cost, calculated per sheet, shall be charged and will not exceed \$0.10 per sheet of paper for black and white copies on letter or legal-size paper. The MICRC shall use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available. Actual costs for irregular size or color copies, if available, may be assessed.
 - Labor costs for the duplication or publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on non-paper physical media or through electronic means, will be calculated using the hourly wage of the MICRC's lowest paid employee capable of duplicating or publishing the public records, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - Actual costs of mailing using a reasonably economical and justifiable manner.
 3. No MICRC employee shall stipulate to work overtime or include overtime wages in the labor costs described in these procedures and guidelines.
 4. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the MICRC's lowest paid employee capable of monitoring the inspection.
- Note: Section 3(3) of the Act, being MCL 15.233(3), provides, in pertinent part, that "[a]

public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."

I. Deposit Requirements.

If the MICRC estimates a fee to process a FOIA request greater than \$50.00, the MICRC will require a good-faith deposit from the requestor before processing the FOIA request. The deposit shall not exceed 1/2 of the total estimated fee except where that person has a previously unpaid FOIA request.

Unless otherwise directed under the Act, if the MICRC receives a request from a person who has not paid the MICRC for copies of records, which were made available for the person in his/her previously submitted FOIA request, the MICRC may require a deposit of 100% of the estimated labor costs and duplication fees before the MICRC begins processing the new FOIA request from that person.

Any written notice containing a notice of a deposit shall also contain a best efforts estimate by the MICRC regarding the time frame after a deposit is received that it will take the MICRC to provide the public records to the requestor. The time frame estimate is not binding upon the MICRC, but the MICRC shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this State's public policy under Section 1 of the Act, being MCL 15.231, and the nature of the request in the particular instance.

J. Inspection of Records

The Act also requires that at the request of the person making the request, a reasonable opportunity for inspection of non-exempt public documents shall be allowed during normal business hours. The FOIA Coordinator must remove exempt material before the inspection. In addition to the labor cost for separation of exempt and non-exempt material prior to an inspection, labor costs for monitoring an inspection of original records will be calculated. A fee will be charged if it is necessary to make a copy of a document to redact a portion that is exempt.

K. Appeals of Fees and Disclosure Determinations

If the MICRC charges a fee or denies all or part of a request, the requestor may submit to the Executive Director of the MICRC a written appeal that specifically states the word "appeal" and identifies the basis for which the fee should be reduced, or the disclosure determination should be reversed.

MICRC WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

The Michigan Independent Citizens Redistricting Commission (MICRC) has adopted FOIA Procedures and Guidelines, dated _____, in accordance with the Michigan Freedom of Information Act (“the Act” or “FOIA”), Public Act 442 of 1976, being MCL 15.231 *et seq.*, and pursuant to the MICRC Rules of Procedure, *Section 13.0, Public Access to Commission Records*, dated February 4, 2021. This document serves as the Written Public Summary of the MICRC’s FOIA Procedures and Guidelines in compliance with Section 4(4) of the Act, being MCL 15.234(4).

The MICRC is committed to transparency and the proactive disclosure of public documents whenever able to reduce the need for formal FOIA requests. To that end, the MICRC regularly posts meeting materials and other documents at RedistrictingMichigan.org for the public’s convenience and to foster transparency in the redistricting process. Visit RedistrictingMichigan.org to determine whether the desired information is publicly available. In particular, navigate to the Meeting Information, [Meeting Material and Archive](#) section of the MICRC website.

What is a FOIA Request?

A FOIA request is a legal process, by which a person can submit a written request to access, review, or obtain a copy of a public record.

All persons, except those who are incarcerated, may submit a FOIA request to the MICRC FOIA Coordinator.

Not every record request should be made into a FOIA request:

- The MICRC maintains a website for the public’s convenience and to foster transparency in the redistricting process. Visit RedistrictingMichigan.org to determine whether the desired information is publicly available. In particular, navigate to the Meeting Information, [Meeting Material and Archive](#) section of the MICRC website.
- If there is a pending lawsuit, the records can be obtained by litigants through a subpoena or a discovery request as part of that underlying lawsuit. Documents required to be produced under a subpoena or other court order are not processed under the Act.

Examples of requests that are not FOIA requests include:

- Request to complete a form or survey is not a FOIA request.
- Request to answer question(s) is not a FOIA request.
- Request to draft or create a document, where none exists, is not a FOIA request.
- Request to provide a narrative explanation of a document or action is not a FOIA request.

What is a Public Record?

Section 2(e) of the Act, being MCL 15.232(e), defines “public record” as “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. Public record does not include computer software.”

The MICRC is a public body as defined in Section 2(h)(ii) of the Act, being MCL 15.232(h)(ii). Therefore, all records prepared, owned, used, in the possession of, or retained by the MICRC in its official capacity are public records.

Are All MICRC Public Records Available Under FOIA?

No. This does not mean that all public records must be disclosed or released to a person who submits a FOIA request. Certain information and records may be exempt from disclosure under the Act or by another state or federal statute.

This separates public records into two (2) classes:

1. Those that are exempt from disclosure under Section 13 of the Act or other law; and
2. All public records that are not exempt from disclosure and that are subject to disclosure under the Act.

What Information or Records are Exempt from Disclosure?

Section 13 of the Act, being MCL 15.243, provides a list of information or records that may be exempt from disclosure. There are also federal and state laws that preclude the disclosure of specific information or records under those laws, which are in turn exempt under Section 13(d) of the Act, being MCL 15.243(d). If a person seeks information or records that fall under one or more of the listed exemptions, the MICRC may deny a portion of or an entire FOIA request. The MICRC must identify the exemption under the Act to the person seeking the information or record and provide a written explanation why the exemption applies in that particular instance.

Therefore, the release of lawfully precluded information or records by a public body employee would result in the violation of state or federal law. This can result in criminal penalties.

Who is the MICRC FOIA Coordinator?

In accordance with Section 6 of the Act, being MCL 15.236, the Executive Director of the MICRC has delegated the responsibilities of the role of FOIA Coordinator to the General Counsel of the MICRC.

What Should my FOIA Request Include?

Although no specific form is required to submit a FOIA request to the MICRC, a form is available for your use and convenience on the MICRC website at: [insert link to form on website](#).

Also, for your convenience, you may email the completed form or your written request, which provides sufficient information to MICRC personnel to locate that requested record(s), to: ICRC-FOIA@Michigan.gov.

1. When submitting a FOIA request, you must sufficiently describe a public record so as to enable personnel to locate the record(s). This should include:
 - A comprehensive description of the document you are seeking; and
 - Timeframe and/or dates, if appropriate.
2. Please try to avoid “any and all” in your description. If your request is too broad, personnel who will be searching and retrieving the record will likely encounter difficulties in locating the record.
 - If the scope of your request is too broad for personnel to locate the requested records, your request may be denied, or you will be presented with a request for a deposit payment.
 - The more descriptive and specific your request is the easier it will be for personnel to search and retrieve the requested record.
3. Your request should include the word “FOIA” or “FOIA Request.”

How do I File a FOIA Request?

Written FOIA requests or the completed Michigan Independent Citizens Redistricting Commission (MICRC) FOIA request form can be submitted in one of the following ways:

- Email: ICRC-FOIA@Michigan.gov; or
- Mail:

Michigan Independent Citizens Redistricting Commission (MICRC)
Attn: FOIA Coordinator
P.O. Box 30318
Lansing, MI 48909

All FOIA requests are required to include a full name, phone number and mailing address. Verbal requests for public records are not accepted.

How will my FOIA Request be Handled by the MICRC?

1. All FOIA requests will be processed by MICRC personnel, including but not limited to the FOIA Coordinator. MICRC personnel may receive assistance from staff designees of the Secretary of State in their capacity as nonvoting secretary of the commission.

2. Your request will be forwarded to the appropriate individual who would most likely have or know the location of the requested record.
 - That individual will exercise due diligence in searching for the requests record(s) from all reasonable places and will advise whether the MICRC is in possession of the requested record.
 - If appropriate, the individual will either complete a FOIA labor costs form or provide the necessary information required to assess an estimate of labor costs or the labor costs incurred by the MICRC under the Act.
3. The individual will return the no record statement, labor cost estimate, or the requested record(s) and, if appropriate, information required to assess the labor costs for that particular FOIA request to the FOIA Coordinator for review.
 - The FOIA Coordinator will review the records to make the determination whether there is any applicable exemption under Section 13 of the Act, being MCL 15.243 and/or whether there is any state or federal statute that would preclude the MICRC from disclosing the requested record.
 - If necessary, the exempt and non-exempt information will be separated from the record, either by redaction or withholding certain document(s). Where appropriate, the FOIA Coordinator will: 1) keep track of the time spent in separating the exempt from non-exempt information; and 2) charge the labor costs to the person who submitted the request in accordance with the Act.

What Type of Response Will I Receive to My FOIA Request?

The MICRC has several options when responding to written requests for public records. It can grant the FOIA request, deny the request, grant it in part and deny it in part, or take a single ten (10) business day extension. After the ten (10) business days extension expires, the MICRC has to respond with one of the other options.

In accordance with Section 5 of the Act, being MCL 15.235, unless otherwise agreed to in writing by the person making the FOIA request, within five (5) business days of the receipt of the FOIA request by the FOIA Coordinator, the MICRC, through its FOIA Coordinator, shall provide a written response to the person who submitted the FOIA request by:

1. Extending the MICRC's time to respond to the request.

- If the request was received by electronic transmission, it is deemed to have been received by the MICRC's FOIA Coordinator on the next business day.
- Any individual associated with the MICRC, being individual Commissioners or staff who receives a written request for a public record must immediately forward that request to the FOIA Coordinator. If an individual receives a written request for a public record that is delivered to a spam or junk-mail folder, that individual must record the date and time the written request is delivered to the spam or junk-mail

folder and date and time the individual first becomes aware of the written request. The individual must forward those dates and times to the FOIA Coordinator with the written request.

- If the requested record is not readily accessible, the MICRC may extend its time to response by an additional ten (10) business days.
- Saturdays, Sundays and holidays are not considered business days.

2. Requesting payment of a good faith deposit.

- If the MICRC estimates a fee to process a FOIA request greater than \$50.00, the MICRC will require a good-faith deposit from the requestor before processing the FOIA request. The deposit shall not exceed 1/2 of the total estimated fee except where that person has a previously unpaid FOIA request.
- Unless otherwise directed under the Act, if the MICRC receives a request from a person who has not paid the MICRC for copies of records, which were made available for the person in his/her previously submitted FOIA request, the MICRC may require a deposit of 100% of the estimated labor costs and duplication fees before the MICRC begins processing the new FOIA request from that person.
- The estimated fee will consist of: 1) an estimated number of hours it will take MICRC personnel to search and retrieve the requested records and, where appropriate, the number of hours it will take the FOIA Coordinator to review and to separate the exempt from the non-exempt information; and 2) the hourly wage rate of the lowest paid MICRC employee that is capable of performing the task as required under the Act. In accordance with the Act, the hourly labor rate will include base salary and fringe benefits.
- Any written notice containing a notice of a deposit shall also contain a best efforts estimate by the MICRC regarding the time frame after a deposit is received that it will take the MICRC to provide the public records to the requestor. The time frame estimate is not binding upon the MICRC, but the MICRC shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this State's public policy under Section 1 of the Act, being MCL 15.231, and the nature of the request in the particular instance.
- All deposit payments must be submitted in check or money order made payable to the State of Michigan in the specific amount request in the response by the MICRC, within the timeframe requested by the MICRC.
- The MICRC will inform the person who made the FOIA request of the right to appeal or file a lawsuit pertaining to the requested deposit payment.

3. Granting the request.

- Make the requested record available for review, pickup or delivery via email or First-Class Mail.
- If appropriate, the MICRC may request payment for the records and/or labor costs incurred by the MICRC in accordance with the Act. The response letter will provide a page count or an estimated page count; itemize the time spent by the personnel that searched and retrieved the requested records; the hourly wage rate of the lowest paid MICRC employee who is capable of performing the task as required under the Act. In accordance with the Act, the hourly wage labor rate will include the base salary and fringe benefits.
- There is no fee for requests that do not require the MICRC to incur costs above the threshold set in its Procedures and Guidelines. Fees are calculated using its Procedures and Guidelines and you will receive a detailed itemization of the fee. The MICRC may require you to pay a good-faith deposit before it processes your request. After you pay any deposit and final balance due, the MICRC will produce records in its possession that fall within the scope of your request and that legally may be disclosed to the public. The MICRC may also notify you that some of the records you have requested are available on its website.
- If seeking labor costs, the MICRC will inform the person who made the FOIA request of the right to appeal or file a lawsuit pertaining to the requested labor costs.

4. Granting in part and denying in part the request.

- Identify what part of the request is being granted and provide a page count.
- Identify what part of the record is being denied, identify all of the relevant exemptions, and include a description of document(s) that are being withheld from disclosure.
- If part of the denial is based on “no record” the response letter will serve as a certificate of no record based on the information provided by personnel from the MICRC.
- If appropriate, the MICRC may request payment for the records and/or labor costs incurred by the MICRC in accordance with the Act. The response letter will provide a page count, itemize the time spent by the MICRC to search and retrieve the requested records; the hourly wage of the lowest paid employee of the MICRC who was capable of performing the task; itemize the time spent by the FOIA Coordinator reviewing the records for any applicable exemptions under the Act and any other federal or state law; and the time spending in separating the exempt from the non-exempt information.

- There is no fee for requests that do not require the MICRC to incur costs above the threshold set in its Procedures and Guidelines. Fees are calculated using its Procedures and Guidelines and you will receive a detailed itemization of the fee. The MICRC may require you to pay a good-faith deposit before it processes your request. After you pay any deposit and final balance due, the MICRC will produce records in its possession that fall within the scope of your request and that legally may be disclosed to the public. The MICRC may also notify you that some of the records you have requested are available on its website.
- Inform the person who made the FOIA request of the right to appeal or file a lawsuit pertaining to the requested labor costs or the portion of the request which is denied.

5. Denying the request.

- Identify the reason for the denial in accordance with the Act. Reasons the MICRC may deny a request include:
 - i. You did not describe the records you have requested well enough and the MICRC cannot determine what you are asking for;
 - ii. The MICRC has determined that it does not have records that respond to your request in its possession; or
 - iii. The records you have requested are exempt from public disclosure.
- If the denial is based on “no record” the response letter will serve as a certificate of no record which would verify that the MICRC did not possess the requested record.
- Inform the person who made the request of the right to appeals or file a lawsuit pertaining to the denial of the request.

How will FOIA Labor Costs and/or Fees be Calculated?

1. The Act permits the MICRC to charge a fee to process FOIA requests using a form to give you a detailed itemization of the costs involved.
2. All labor costs and/or fees that are requested by the MICRC must be submitted in check or money order made payable to the State of Michigan in the specific amount requested in the response by the MICRC prior to making the records accessible to the person who submitted the FOIA request.
3. In accordance with the Act, a black and white hard copy in 8.5” x 11” or 8.5” x 14” paper format, will be made available for \$0.10 per page.
4. Irregular-sized hard copy of the record can also be made available at cost.
5. A color copy of the record in in 8.5” x 11” or 8.5” x 14” paper format, if available, can be available at cost.
6. The MICRC may charge the fees and labor costs where appropriate under the Act and in the manners required by the Act. The following may be included:
 - Labor costs associated with searching, locating, and examining public records, when failure to do so will result in unreasonably high costs to the MICRC.

- Labor costs associated with reviewing the record to separate the exempt from the non-exempt information, when failure to do so will result in unreasonably high costs to the MICRC. If labor cost is incurred by a contractor, it shall not exceed an amount equal to six (6) times the State of Michigan minimum hourly wage.
- The cost of computer discs, computer tapes, other digital or similar media when the request is for non-paper physical media.
- Labor costs associated with copying or duplication, which includes making paper copies, digital copies, or transferring digital records to non-paper physical media or through the Internet.
- For paper copies, the fee shall be the total incremental cost of necessary duplication. A page count will be provided.
- The cost of labor directly associated with duplication or publication, including making paper copies, digital copies, or transferring digital records on non-paper media or through the internet or other electronic means.
- The actual cost of mailing public records.

Is the Response Letter I Received Final or Can It Be Challenged?

If the MICRC charges a fee or denies all or part of a request, you may submit to the MICRC Executive Director a written appeal that specifically states the word "Appeal" or "FOIA Appeal" and identifies the basis for which the fee should be reduced, or the disclosure determination should be reversed. Written appeals may be sent to the email address or mailing address listed above and will be forwarded to the Executive Director.

- Email: ICRC-FOIA@Michigan.gov; or
- Mail:

Michigan Independent Citizens Redistricting Commission (MICRC)
Attn: Executive Director/FOIA Appeal
P.O. Box 30318
Lansing, MI 48909