

Freedom of Information Act (FOIA)

Effective Date: 10/01/2013

Policy Number: G-13

Revised Date: 04/04/2022

Purpose:

Under the Freedom of Information Act (FOIA), MCL 15.231 et seq., a person has the right to inspect and get copies of public records in the possession of the Department of Insurance and Financial Services (DIFS) upon written request unless those records are otherwise exempt from public disclosure.

This policy is intended to ensure uniformity of practice and procedures in the processing of requests for public records. This policy will also serve as the “procedures and guidelines” required in section 4(4) of the Freedom of Information Act, MCL 15.234(4), to let the public know how the Department of Insurance and Financial Services will respond to requests for access to public records.

Definitions:

Fees: a charge made by DIFS to a FOIA requestor for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record.

FOIA Coordinator: the person designated by the Director of DIFS to have the primary responsibility for accepting and processing requests for records under FOIA and for approving denials of requests. DIFS is required to designate an individual to be the FOIA Coordinator.

FOIA Analyst: the person designated by the FOIA Coordinator to provide department-wide assistance and advice relative to processing FOIA requests and maintain FOIA records.

FOIA Representative: a person designated by the FOIA Coordinator with the primary responsibility to accept and process requests for public records within an office or unit of DIFS.

FOIA Request: a written request submitted to DIFS that sufficiently describes a record. The request must also include the complete name, address, and contact information, including a valid telephone number or email address, of the requestor. The address must be written in compliance with United States Postal Service addressing standards.

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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 this state or any other state, or in a federal correctional facility.

Public Record: a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function. Public record does not include computer software. FOIA separates public records into two classes:

- i. Those exempt from disclosure under section 13.
- ii. All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under FOIA.

Requestor: the person (see definition of person) making the request for documents under FOIA.

Writing: handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drum, or other means of recording or retaining meaningful content. A writing is also information contained in a database or electronic records.

Policy:

General Information:

1. All public records in DIFS' possession are subject to FOIA, for which a disclosure determination is made by the FOIA Coordinator. This includes documents in DIFS' possession that are created by another agency or entity.
2. FOIA requests may be submitted in person or by mail, fax or email. The request must include the complete name, address, and contact information, including a valid telephone number or email address, of the requestor. A request not containing this information shall be rejected. Except as set forth in paragraph 3, any written request for a document shall be considered a FOIA request, regardless of whether the terms "Freedom of Information Act" or "FOIA" are mentioned.
3. The following types of requests shall be forwarded to the FOIA Coordinator for the proper processing:

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- a. A request from a governmental agency, including a court, which is entitled bylaw to receive the information or documents requested.1
- b. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents).
- c. A request from the Department of Attorney General for documents that are needed for pending litigation.
- d. A request from a private entity or governmental agency 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 resources staff.
- e. A request from an employee to inspect the employee's personnel files, or to receive one copy of the documents in those files. Such requests shall be referred to the appropriate human resources staff.
- f. A request from a collective bargaining unit, under its contract, for documents related to a disciplinary matter. Such requests shall be referred to the human resources staff.
- g. Documents required to be produced by a subpoena or other court order.
- h. A request from a news media representative (copy of request must also be immediately provided to DIFS' Public Information Officer).
- i. A request from a law enforcement agency.

Department FOIA Coordinator/FOIA Analyst/FOIA Representatives:

1. The Director has designated the DIFS General Counsel to be the department's FOIA Coordinator. The FOIA Coordinator may designate one or more individuals to act on his or her behalf. Each office of the department shall designate an individual to be the FOIA Representative for that office.
2. A FOIA Representative shall be designated for each DIFS Office to act on behalf of the Department FOIA Coordinator to accept and process FOIA requests under certain circumstances, i.e., standard requests where no denial letter is required.
3. Each FOIA Representative shall:
 - Provide a copy of each FOIA request and response to the FOIA Analyst.
 - Maintain a copy of all FOIA requests received and all completed Responses to Request for Public Records. These documents shall be retained in accordance with DIFS' Record Retention and Disposal

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Schedule, but for no less than one year, in accordance with Section 3(2) of FOIA.

Processing FOIA Requests:

1. A request for public records received by any DIFS employee shall be immediately forwarded by e-mail, fax transmittal, or hand delivery to the FOIA Coordinator or to the appropriate FOIA Representative. The appropriate FOIA Representative shall respond to the request within five (5) business days after the request is received. The response should be issued as soon as it is ready, not held until the due date. If there is a delay in fulfilling a request, the requestor should be notified as soon as possible regarding the delay. A request received by facsimile or electronic mail shall be considered received on the business day following the date of transmission. If a denial is needed for any reason, other than nonexistence, the FOIA Coordinator must be notified of the statutory basis for the denial. The FOIA Analyst will work with the FOIA Representative or other staff to coordinate all denials. Denials should be made in plain language, must include citations to all provisions of Michigan law that form the basis for the denial, and must include a plain-language description of the requestor's right to appeal the denial.
2. An extension of ten (10) business days may be taken by the FOIA Coordinator when additional time is needed to respond to a request. Extensions should only be used when absolutely necessary to provide a complete response to a requestor. The notice of the extension must inform the requestor that the ten-business day extension is being taken, state the reason for the extension, and give the new due date for response. When estimating the date for response, a response must be provided by that date. If a response is ready before the deadline, it must be issued when it is ready. If there is a delay in fulfilling a request, the requestor should be notified as soon as possible regarding the delay.
3. A FOIA Representative shall review the request and determine whether the department possesses nonexempt records responsive to the request. DIFS shall provide existing, nonexempt public records under the name given by the requestor or by another name reasonably known to DIFS.
 - FOIA does not require DIFS to make a compilation, summary or report or information, except as required by section 11 of FOIA.

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- FOIA does not require DIFS to create a public record, except as required in section 11 of FOIA.

The extracting of certain fields within a database is acceptable and does not constitute the creation of a new record. However, if certain fields of a database are exempt from disclosure, those fields must be redacted (blacked out or removed) before the remainder of the public record is disclosed. Contact the FOIA Analyst for questions in this area.

4. A FOIA Representative shall be responsible for obtaining the requested documents that are in DIFS' possession in that office. If the records requested are not in DIFS' possession, the FOIA Representative is not required to obtain them from outside DIFS in order to comply with the request.
5. The appropriate FOIA Representative shall carefully review the documents obtained to ensure that no information is exempt from disclosure. The bases for exempting from disclosure are set forth in section 13 of FOIA, MCL 15.243. If more than one exemption applies to a request, all relevant exemptions shall be indicated when responding. The statutory basis for any exemption must be included in the response to the requestor.

If any portion of a public record is exempt from disclosure, the exempt portion shall be deleted before the nonexempt portion of the document is disclosed. The FOIA Representative shall make sure that deleted information is not readable on public record disclosed.

Exemptions Under FOIA:

The exemptions allowed by FOIA are expressed in general language, which must be applied to the specific document requested. It is impossible to list all exempt information or documents; therefore, FOIA Representatives must be familiar with all exemptions within their office. The following are some of the exemptions which are most frequently used and examples of the items to which the exemptions may apply:

1. Clearly unwarranted invasion of an individual's privacy. Section 13(1)(a).

Examples - Home addresses and home telephone numbers, personal cell numbers, bank account, or credit card numbers.

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2. Information which is preliminary to a final agency decision unless it is purely factual or the public interest warrants disclosure. Section 13(1)(m).

Examples - Interview notes; internal affairs, harassment, and sexual harassment investigations prior to completion. (Note: Portions or all of an investigation may be exempt after completion for other reasons, e.g., privacy or security concerns.)

3. Information specifically exempted from disclosure by another statute. Section 13(1)(d).

Examples – Documents and information protected under the Insurance Code.

4. The home addresses, home telephone numbers, and other information contained within the personnel files of a Department employee, unless the requestor is the employee. However, the employee's name, age (not date of birth), past and present positions with the Department and length of service in a position shall be provided to any requestor. For purposes of this exemption, personnel files include medical and expunging files maintained on an employee.

5. Information which is subject to a specific privilege (e.g., attorney-client), except if the requestor has a signed release from the client. Section 13(1)(g).

Example – Office of General Counsel or Attorney General guidance/communications.

6. Information or records that would disclose the social security number of any individual. Section 13(1)(w).

7. Information or records relating to a civil court action in which the requesting party and the Department are parties. Section 13(1)(v).

Fees:

FOIA permits DIFS to charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material, but only if the failure to charge a fee would result in unreasonably high costs to the Department because of the nature of the request in the particular instance, and the Department specifically identifies the nature of these unreasonably high costs. MCL 15.234(1) and (3). If

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charging a fee, the Department will issue an invoice to pay the expenses. In compliance with Executive Directive No. 2022-3, fees can be paid with a Credit Card online through the Department's online payment system. Fees can also be paid with a check. Payment option instructions will be sent to the requestor when they are invoiced.

The following fee guidelines for calculating labor and material costs incurred in processing FOIA requests are established pursuant to MCL 15.234(3):

1. Fees will be uniform and not dependent upon the identity of the requesting person.
2. Fees will be itemized using DIFS' detailed itemization form and will include:
 - A. Labor costs for the search, location, and examination of public records will be calculated using the hourly wage of the Department'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 will be waived for the first three hours and thereafter shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the Department's payroll records for the applicable fiscal year. 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.
 - B. Labor costs for the review of public records and separation and deletion of exempt from nonexempt material will be calculated using the hourly wage of the Department's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, whether or not they are available or actually perform the labor. Such labor costs will be waived for the first three hours and thereafter shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the Department's payroll records for the applicable fiscal year. 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.

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- C. Nonpaper 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 Department.
 - D. 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 Department will waive copying charges for the first forty (40) pages, at which time the actual and incremental cost, calculated per sheet, shall be charged and will not exceed 10 cents per sheet of paper for letter or legal size paper. The Department shall use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available.
 - E. 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 nonpaper physical media or through electronic means, will be calculated using the hourly wage of the Department'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. The hourly wage will be based on the Department's payroll records for the applicable fiscal year. 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.
 - F. Actual costs of mailing using a reasonably economical and justifiable manner.
- 3. No Department employee shall stipulate to work overtime or include overtime wages in the labor costs described in these procedures and guidelines.
 - 4. If a requester submits an affidavit of indigency, the first \$20.00 of a fee will be waived. A requesting person must include a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

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5. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the Department's lowest paid employee capable of monitoring the inspection. Labor costs for monitoring an inspection will not be charged for the first three hours. The hourly wage will be based on the Department's payroll records for the applicable fiscal year. Note: Section 3(3) of FOIA, MCL 15.233(3), provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."
6. If a statute authorizes the sale or production of public records to the public for a specified fee or if a fee for production of public records is otherwise set by statute, the Department will charge the statutory fee in lieu of a fee calculated using the guidelines set forth above.
7. The Department will not charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material that will take less than three hours. If the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material will take more than three hours, a fee will be charged in accordance with this procedure pursuant to section 4 of FOIA, MCL 15.234. The hourly wage will be based on the Department's payroll records for the applicable fiscal year.

Deposit Requirements:

If DIFS' estimated fee to process a FOIA request is greater than \$50.00, DIFS may ask for a good-faith deposit from the requestor before providing the public records. The deposit shall not exceed 50% of the total estimated fee. Any written notice containing a notice of a deposit shall also contain a best efforts estimate regarding the time frame after a deposit is received that it will take to provide the public records to the requestor. The time frame estimate is not binding upon the Department, but the Department 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 FOIA, MCL 15.231, and the nature of the request in the particular instance.

A requestor has 45 days from the date of receipt of a notice of a required deposit to pay the deposit. If the deposit is not received by that date, and the requestor has not filed an appeal, then the request is considered abandoned. A notice of required deposit is considered to have been received three days after the public body sends it, regardless of the method of transmission.

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Inspection:

FOIA also requires that a requestor be given a reasonable opportunity to inspect nonexempt public records. Inspection shall be done during normal business hours. The appropriate FOIA Representative must remove any exempt information before the inspection. There is no charge to inspect public records unless it is necessary to copy the public records in order to delete exempt information or when a DIFS employee is must supervise the inspection.

Appeal of Fees or Denial:

If the Department charges a fee or denies all or part of a request, the requestor may submit to the head of the Department 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. Written appeals may be sent to the email address or mailing address below and will be forwarded to the Director or the FOIA Coordinator to respond to written appeals.

Email: DIFS-FOIA@michigan.gov

U.S. Mail: Dept. of Insurance and Financial Services, P.O. Box 30220, Lansing, MI 48909-7720

Courier or Hand Delivery: Dept. of Insurance and Financial Services, Stevens T. Mason, Building, 7th Floor, 530 W. Allegan St., Lansing, MI 48933

Procedure:

The FOIA Analyst, along with the FOIA Coordinator, is responsible for providing assistance and advice to all FOIA Representatives in processing FOIA requests involving complex documents or confidential information.

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Responsibility	Action
DIFS Employee	<ul style="list-style-type: none"> • Receives request for public records (FOIA). • Immediately forwards original request to DIFS FOIA Analyst and DIFS Office FOIA Representative (if known), preferably by e-mail or hand-delivery.
FOIA Analyst	<ul style="list-style-type: none"> • Receives and maintains all FOIA Requests submitted to DIFS. • Ensures all FOIA Requests contain the complete name, and required address and contact information of the Requestor. • Analyzes all FOIA Requests to determine appropriate DIFS Office to respond. <p>Enters enter all pertinent information into FOIA database and obtains a tracking number and due date. Provides copy of request (with FOIA # and due date) to FOIA Representative involved in processing request.</p> <ul style="list-style-type: none"> • Together with appropriate FOIA Representative, determines whether documents requested exist within DIFS. • If documents <i>do not</i> exist within DIFS, prepares “nonexistence response letter” to requestor and closes out in Obase. • Coordinates all FOIA requests seeking records from more than one DIFS Office. • Provides assistance and advice to FOIA Representatives and other DIFS staff as needed. • Ensures deadlines for responses are met.

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	<ul style="list-style-type: none"> • Notifies requestors as soon as possible if there is a delay in fulfilling a request. • Works with FOIA Coordinator on preparation of all FOIA denial letters, 10-day extension letters, and communications to requestors regarding delays in fulfilling requests.
<p>FOIA Representative</p>	<ul style="list-style-type: none"> • May enter all pertinent information into FOIA database (currently Obase) and obtains a tracking number and due date. Provides copy of request (with FOIA # and due date) to FOIA Analyst including the name(s) of any DIFS staff involved in processing request. • Together with appropriate DIFS staff, determines whether documents requested exist within DIFS. • If documents <i>do not</i> exist within DIFS, notifies FOIA Analyst that a “nonexistence response letter” should be sent to requestor. • If documents <i>do exist</i> within DIFS: <ul style="list-style-type: none"> • Determines whether the search, compilation and separation of existing non-exempt records from exempt records will incur fees and costs exceeding \$20.00. If so, notifies the requestor using “Detailed Itemization of Fees” and provides FOIA Analyst with copy. • Ensures payment is received before compiling or distributing requested records. • Upon receipt of 50% of estimated fees and costs, ensures appropriate documents are gathered. • Carefully screens documents to determine whether any exemptions apply and/or redactions need to be made

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	<ul style="list-style-type: none"> • If documents are exempt by statute, provides a description of the exempt documents to FOIA Analyst for preparation of response. • If redactions need to be made, provide one copy of original document(s) and one copy of the redacted version to the FOIA Analyst with explanation of redactions. • Sends response to requestor if able to provide requested records with no exemptions or redactions requiring denial or partial denial. • Closes out in Obase (enters approved and date response was sent). • Maintains a copy of response and provides FOIA Analyst with copy.
<p>FOIA Coordinator</p>	<ul style="list-style-type: none"> • Works with FOIA Analyst on preparation of all denial letters. • Receives all FOIA Appeals on behalf of Director. • Works with FOIA Analyst to ensure the FOIA Appeal is entered in Obase. • Investigates initial response and prepares an appeal response. Final response is forwarded to the Director. • Receives signed appeal response from the Director, makes copy of appeal response and maintains file. Forwards appeal response to the requestor.

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<p>Transparency Liaison</p>	<ul style="list-style-type: none"> • Makes recommendations to the Department to reduce costs relating to public records requests, and to encourage transparency. • Advocates for the disclosure of public records quickly and in a cost-efficient manner. • Recommends changes to the Department's FOIA procedures and guidelines.
<p>Director</p>	<ul style="list-style-type: none"> • Upholds or reverses initial response.

Statutory References

PA 442 of 1976, MCL 15.231 et seq.

PA 218 of 1956, MCL 500.100 et seq.

PA 276 of 1999, MCL 487.11101 et seq.

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