



Michigan Department of Natural Resources

POLICY AND PROCEDURE

19.00-00 – Freedom Of Information Act (FOIA) Requirements and Compliance Information (Revised: 06/30/2015)

Supersedes:

19.00-00 - Freedom Of Information Act (FOIA) Requirements and Compliance Information (Issued: 08/22/2002 and Revised: 06/10/2013)

19.00-01 - Freedom Of Information Act (FOIA) Fees Information and Fee Schedule (Issued: 08/22/2002)

19.00-02 - Roles and Responsibilities of DNR Personnel Regarding Freedom Of Information Act (FOIA) Requests (Issued: 08/22/2002)

19.00-02, Suppl. 1 - DNR Freedom Of Information (FOIA) Representatives Listing (Issued: 04/30/2007)

19.00-03 - Processing Freedom Of Information Act (FOIA) Requests (Issued: 10/11/2005)

19.00-04 - Logging Freedom Of Information Act (FOIA) Requests into the FOIA Tracking System (Issued: 08/22/2002)

19.00-12 - Freedom Of Information Act Denial of Requests for the Disclosure of Records (Issued: 07/11/2005)

Purpose:

The purpose of this procedure is to ensure consistent application of the Freedom Of Information Act (FOIA) requirements.

Definitions:

Correspondence means any written communication, regardless of transmission, such as a letter, fax, or electronic mail.

FOIA means the Freedom of Information Act, 1976 PA 442, as amended.

FOIA Coordinator means the individual designated by the Director of a public body in accordance with Section 6 of Michigan's FOIA to accept and process requests for public records. The FOIA coordinator serves as the DNR specialist available to answer 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 a denial of a request for an exempt public record and to approve a request for a fee waiver.

FOIA Liaison means the person(s) in each Division/Office designated to serve as liaison(s) between FOIA coordinator and the public making the FOIA request. The FOIA liaison is authorized to sign a Department-response letter for the following:

1. A request by the Department for a 10-day extension to respond.
2. Letter of denial because of insufficient information.
3. Letter of denial because the requested records do not exist.
4. Cancellation letter.
5. Other correspondence for the FOIA Coordinator.

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The FOIA liaison serves as backup and may be authorized to serve as the FOIA Coordinator in his or her absence.

Partial denial means part of the FOIA request cannot be filled because the records do not exist, or the requested information is exempt from disclosure and, therefore, not for public distribution (see FOIA Section 13).

FOIA log means the DNR tracking system (MS Access database) used to monitor DNR's FOIA requests.

Protection of records means a public body may make reasonable rules necessary to protect its public records from loss, unauthorized alteration, mutilation, or destruction (See **In-Person Inspection** below).

Policy:

The DNR encourages public participation in and knowledge of its decision-making processes; provides public access to DNR records as required under FOIA; and ensures accurate and timely responses to FOIA requests.

Any request for assistance from the Department of Attorney General, including questions regarding response to a FOIA request shall be coordinated through the Department's FOIA Coordinator.

The Department shall furnish a person a reasonable opportunity for inspection and examination of a public record, and shall furnish a reasonable facility during the usual business hours. The Department (or FOIA Coordinator or Division/Office Liaison) shall:

1. Provide a designated space, including a table and chair.
2. Be present while the document is being reviewed.
3. Not allow original documents to be removed from the file or from the designated space (unless a copy is made by the FOIA Coordinator or Liaison).
4. Protect a public record from loss, unauthorized alteration, mutilation, or destruction.
5. Record and invoice a reasonable fee for DNR staff who assist and oversee the process of a person's record search, copying, and examination of the public record.

All written FOIA requests and responses for public records shall be kept on file **no less than one (1) year** from the date the request is received. Each DNR Division/Office must maintain records for FOIA requests. Requests for multiple Division/Office records must be maintained in the files of the FOIA Coordinator.

Administering Division:

Office of Legal Services

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Procedure:

DNR Employee

1. Receives a FOIA request and date-stamps paper copy of FOIA.
2. Forwards to the DNR FOIA Coordinator or (FOIA Liaison for Division/Office-specific requests)

FOIA Coordinator or FOIA Liaison

3. Logs FOIA request into FOIA database and coordinates response.
4. Reviews FOIA request to determine if the request can be filled by the DNR.
 - A. If yes, proceeds to Step 5.
 - B. If no, sends Records Do Not Exist Denial letter (Use templates located in DNR SharePoint Intranet at FOIA Templates).
5. Reviews FOIA request to determine what Division/Office may have records responsive to the FOIA request. Reviews the FOIA request with program staff to determine where the record is located or whether the record is exempt, in whole or in part, and:
 - A. Responds within the 5-day response time; and/or
 - B. Requests, in writing, a 10-business-day extension, indicating the Division/Office the FOIA request has been forwarded to for processing.
6. Forwards the FOIA request to the appropriate staff for processing. Proceeds to Step 8.
7. If record is exempt, in whole or in part, proceeds to Step 9.
8. Only the Department's FOIA Coordinator or FOIA Liaison(s) will respond to FOIA requests. The department will provide copies of these procedures and guidelines and a summary of these procedures and guidelines with each written response or provide a link to an on line version of these documents. If a request is denied, in full or in part, the Department will provide the requester an explanation of the basis of the denial under the FOIA, and give notice to the requester of his or her remedial rights. MCL 15.235(4)

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- Division/Office FOIA Liaisons
9. Reviews FOIA request to determine if FOIA request is specific enough to locate the desired record [See FOIA Section 3(1)]. If FOIA request is so broad that it encompasses a large volume of information (see A below), or if FOIA request is not specific enough (see B below):
 - A. Estimates the total cost to fulfill FOIA request, and if the total cost is \$20 or more [see [DNR FOIA Estimates Worksheet](#)].
 - B. Contact the requestor to clarify FOIA request.
 1. If the FOIA coordinator has a conversation with the requestor that changes the original FOIA request, prepares and sends correspondence to the requestor stating the details of the amended FOIA request.
 2. If requestor subsequently cancels the FOIA request, requests the withdrawal in writing (hard copy or electronic) or prepares a written response back to requestor confirming the details of the conversation, including date of conversation.
 10. Reviews FOIA request to determine if requested record is exempt from disclosure.
 - A. If the record is part of ongoing litigation and the requestor is named in the lawsuit, contacts the FOIA Coordinator, as it may be exempt.
 - B. If the record is part of ongoing litigation and the requestor is not named in the lawsuit or if the record is not part of ongoing litigation, it may not be exempt.
 - C. If all or part of the requested record appears to be exempt from disclosure, prepares a response for the FOIA Coordinator's signature that lists the applicable exemption(s) in accordance with Section 13 of the FOIA, MCL 15.243.
 - D. If the requested record is not exempt from disclosure, prepares a response to the request, or proceeds to Step 11.

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11. If FOIA requestor wants to review the record(s) with an on-site appointment, the requestor is charged for the following costs:
 - A. Copy/scan of records that will only be performed by DNR staff. Videotaping, photographing, and scanning of files (using personal equipment) will be allowed.
 - B. DNR staff hours to search, retrieve, examine, review, and sort exempt and nonexempt information.
 - C. If DNR staff is required to monitor a requestor's inspection of records, the requestor is charged for DNR staff hours calculated at the clerical rate. DNR staff shall 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 DNR staff to ensure that the requested records and staff are available.

12. The FOIA permits the Department 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)

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

A. Fees will be uniform and not dependent upon the identity of the requesting person.

B. Fees will be itemized using the attached detailed itemization form and will include:

- i. 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 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.

- ii. 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 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.

- iii. 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.

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iv. 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 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.

v. 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.

vi. Actual costs of mailing using a reasonably economical and justifiable manner.

13. If the Department estimates a fee to process a FOIA request greater than \$50.00, the Department will require a good-faith deposit from the requestor before providing the public records to the requestor. The deposit shall not exceed 1/2 of the total estimated fee. Any written notice containing a notice of a deposit shall also contain a best efforts estimate by the Department regarding the time frame after a deposit is received that it will take the Department 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 the FOIA, MCL 15.231, and the nature of the request in the particular instance.
14. Upon receipt of final payment for all FOIA requests, mails records.

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15. 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 listed above and will be forwarded to the Attorney General or the person designated by the Attorney General to respond to written appeals.

FOIA Coordinator

16. Reviews and updates hourly wage and per-page rates on an annual basis, or as necessary.

Related Reference:

[Freedom of Information Act, Act No. 442, P. A. 1976, as amended](#)

[19.00-05 – Freedom Of Information Act \(FOIA\) Requests Tracking System User Guide \(ISSUED: 08/22/2002\)](#) (for internal use only)

[DNR FOIA Templates](#) (for internal use only)

[DNR FOIA Estimates Worksheet](#)

[PR1046E, Request for Disclosure of DNR Records Under the Freedom of Information Act](#)

State of Michigan Administrative Guide to State Government:
[2410 Michigan Statutes of General Applicability](#)

[2410.01 Freedom of Information Act \(FOIA\)](#)

19.00-00 – Freedom Of Information Act (FOIA) Requirements and Compliance Information is hereby approved.

Keith Creagh, Director

Effective Date