



## DEPARTMENT POLICY AND PROCEDURE

### 01-006 Disclosure of Public Records: Responding to Freedom of Information Act Requests

Policy Category: (01) Administrative  
Original Effective Date: November 7, 1997  
Last Revision Date: June 29, 2018  
Distribution: DEQ Employees

#### ISSUE

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

#### AUTHORITY

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Michigan Freedom of Information Act, 1976 PA 442, as amended

#### DEFINITIONS

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**“Division Central FOIA Liaison”** means Lansing Division staff responsible for overall coordination and tracking of Division FOIA request responses; distribution of Division FOIA requests to FOIA Liaisons; and ensuring that the Division appropriately and consistently responds to FOIA requests within prescribed timeframes.

**“Correspondence”** means any written communication, regardless of transmission, such as a letter, fax, or e-mail.

**“Denial Appeal”** means an appeal of a denial or partial denial letter or e-mail issued by the DEQ FOIA Coordinator.

**“DEQFOIA Team”** means staff in the FOIA Section in the Administration Division that receive, assign, and centrally track all FOIA requests for the DEQ. The FOIA Coordinator is a member of this team.

**“Fee Appeal”** means an appeal of the total estimated cost or good faith estimate.

**“FOIA Coordinator”** means the individual designated by the public body in accordance with Section 6 of Michigan's FOIA (MCL 15.236) to accept and process requests for public records. The FOIA Coordinator is member of the DEQFOIA Team.

**“FOIA Liaison”** means the person responsible for assigning FOIA requests to Division staff; working with staff to identify, locate and appropriately review responsive records; and releasing records.

**“FOIA Request”** means a written document requesting information, regardless of transmission. The written document must describe a public record sufficiently to enable the public body to find the public record.

**“FOIA Requester”** means the person who submits a written request for information to the DEQ.

**“Public Record”** means 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, e-mail, photocopies, tape recorded, video recorded, maps, pictures, 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 the FOIA Coordinator will issue a fee waiver for the first \$20 of the fee for each request to an individual who submits an affidavit stating that the individual receives public assistance, or if not receiving public assistance, stating facts showing the inability to pay. Although a majority of the FOIA requests received by the DEQ pertain to records that may be considered as primarily benefitting the public, the DEQ does not waive, reduce, or exempt the fee solely based on benefit to the public. The DEQ must utilize our monies and resources, entrusted to us by the taxpayers, in the most efficient manner possible to carry out our mission.

## **POLICY**

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The DEQ encourages transparency, public participation in, and knowledge of, its decision-making processes. This includes providing the public with access to DEQ records as required under the FOIA.

To ensure accurate and timely responses to FOIA requests, all DEQ FOIA requests must be sent to the FOIA Coordinator for processing.

## **PROCEDURE**

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Step	Who	Does What
1.	FOIA Requester	Submits a written FOIA request to the DEQ FOIA Coordinator at:  DEQ FOIA Coordinator P.O. Box 30473 Lansing, Michigan 48909-7973 DEQFOIA@michigan.gov  Additional information is located on the DEQ FOIA Web site, <a href="http://www.michigan.gov/deqfoia">www.michigan.gov/deqfoia</a> .  A FOIA Requester may cancel a FOIA request at any time by sending an e-mail to: DEQFOIA@michigan.gov and indicate the FOIA tracking number.

Step	Who	Does What
2.	DEQ Employee	<p>Receives a paper copy of a FOIA request: date stamps the paper copy and immediately forwards it to the FOIA Coordinator in the most-efficient means available, i.e., scan and attach to e-mail addressed to: DEQFOIA@michigan.gov.</p> <p>Receives an electronic FOIA request: immediately forwards it to the FOIA Coordinator using the following address: DEQFOIA@michigan.gov.</p>
3.	DEQFOIA Team	<p>Reviews the FOIA request to determine if the request can be filled.</p> <ul style="list-style-type: none"> <li>a. If yes, proceeds to Step 4.</li> <li>b. If no, logs the FOIA request into the FOIA database: <ul style="list-style-type: none"> <li>1. Issues a records do not exist denial e-mail/letter (<a href="#">EQ1048a</a>); or</li> <li>2. Issues an insufficient information e-mail/letter (<a href="#">EQ1048b</a>).</li> </ul> </li> </ul>
4.	DEQFOIA Team	<p>Reviews the FOIA request to determine which Division(s)/Office(s) is most likely to have responsive records.</p> <ul style="list-style-type: none"> <li>a. In the upper, right-hand corner of the FOIA request, places the FOIA tracking number, due date, and Division(s)/Office(s) and District/Field office(s) responsible for responding to the FOIA request.</li> <li>b. If a fee waiver is requested, indicates on the request if the waiver is approved or denied.</li> <li>b. Logs the FOIA request into the FOIA database.</li> </ul>
5.	DEQFOIA Team	E-mails the FOIA request to the Division Central FOIA Liaison(s) in the appropriate Division(s)/Office(s) and/or District/Field Office(s).
6.	DEQFOIA Team	Confirms receipt of the FOIA request by issuing a notification to the FOIA Requester. The notification shall contain the FOIA tracking number, Division(s)/Office(s) that will respond, due date including 10-day extension, if appropriate, and approval or denial of fee waiver, if appropriate.
7.	Division Central FOIA Liaison	Immediately forwards the FOIA request to the appropriate FOIA Liaison(s).

Step	Who	Does What
8.	FOIA Liaison	<p>Reviews the FOIA request within five business days with appropriate Division program staff to determine if the FOIA request is specific enough to locate the desired record(s) (see FOIA Section 3[1]) and determines where the record(s) is/are located.</p> <ul style="list-style-type: none"> <li>a. Forwards the FOIA request to the appropriate staff for processing. Proceeds to Step 9 or 10.</li> <li>b. If the record(s) is/are exempt, in whole or in part, proceeds to Step 13.</li> </ul>
9.	FOIA Liaison	<p>If the FOIA request is so broad that it encompasses a large volume of information, or if the FOIA request is not specific enough:</p> <ul style="list-style-type: none"> <li>a. Within five business days, estimates the total cost to fulfill the FOIA request, and if the total cost is \$50 or more, proceeds to Step 17.</li> <li>b. The Division Central FOIA Liaison will contact the FOIA Requester to clarify the FOIA request or, pursuant to Division/Office procedures, the FOIA Liaison may contact the FOIA Requester.</li> <li>c. May notify DEQFOIA that assistance is needed from the Departments of Attorney General and/or Technology Management and Budget with record gathering and/or review. Associated costs will be passed along to the FOIA Requester.</li> <li>d. If the FOIA Requester subsequently cancels the FOIA request, the FOIA Liaison will notify the Division Central FOIA Liaison.</li> <li>e. The Division Central FOIA Liaison will notify the DEQFOIA Team.</li> </ul>
10.	FOIA Liaison	If no records exist, notifies Division Central FOIA Liaison as appropriate.
11.	Division Central FOIA Liaison	If no records exist, notifies the DEQFOIA Team.
12.	DEQFOIA Team	Sends a records do not exist Denial notice to the FOIA Requester.

Step	Who	Does What
13.	DEQ Employee	<p>Reviews the FOIA request within five business days to determine whether requested record(s) is/are exempt from disclosure.</p> <ul style="list-style-type: none"> <li>a. If the record is part of ongoing litigation and the FOIA Requester is named in the lawsuit, contacts the DEQFOIA Team and notifies the Division Central FOIA Liaison as appropriate.                             <ul style="list-style-type: none"> <li>1. If the FOIA Requester is not named in the lawsuit or if the record(s) is/are not part of ongoing litigation, proceeds to Step 13c.</li> </ul> </li> <li>b. If all or part of the requested record(s) appear(s) to be exempt from disclosure (see description of exempt records in Section 13 of the FOIA), informs the DEQFOIA Team and notifies the Division Central FOIA Liaison, as appropriate.</li> <li>c. If the requested record(s) is/are not exempt from disclosure, proceeds to Step 15 or 16.</li> </ul>
14.	DEQFOIA Team	Sends partial denial to FOIA Requester.
15.	FOIA Liaison	<p>If records exist and the total estimated cost is less than the DEQ's minimum charge of \$20.00, sends records to FOIA Requester in the most efficient and economical manner.</p> <p>It is expected that most responses will be sent in less than 10 business days.</p> <p>Notifies the Division Central FOIA Liaison as appropriate.</p>

Step	Who	Does What
16.	FOIA Liaison	<p>Coordinates on-site appointments if the FOIA Requester elects to review the record(s) in person.</p> <p>Contact with the FOIA Requester must be within five business days; the actual appointment does not have to be within the five business days.</p> <ul style="list-style-type: none"> <li>a. The FOIA Requester may be charged for the following costs:                             <ul style="list-style-type: none"> <li>1. Costs associated with the copying/scanning of the records performed by DEQ staff.</li> <li>2. Staff time for the search, retrieval, examination, review, and separation of exempt and nonexempt information.</li> <li>3. If the presence of a staff member is necessary to monitor a FOIA Requester's inspection of records, the FOIA Requester is charged for the staff time utilizing the administrative rate.                                     <ul style="list-style-type: none"> <li>i. Staff members should be present during a record inspection if (a) the integrity of the file may be in question, or (b) it is required by division/office/ district/field procedures.</li> <li>ii. On-site appointments should be arranged with the appropriate staff to ensure that the requested records and staff are available.</li> </ul> </li> </ul> </li> <li>b. FOIA Requesters may utilize his or her personal equipment to videotape, copy, and/or scan files to eliminate or minimize costs associated with the copying/scanning of records.</li> </ul>

Step	Who	Does What
17.	FOIA Liaison	<p data-bbox="505 262 1328 323">Estimates and calculates the fee to be charged for providing the requested record(s).</p> <ul style="list-style-type: none"><li data-bbox="540 363 1422 457">a. Estimates and calculates the number of hours required to search for, retrieve, examine, review, and separate exempt and non-exempt information, and to mail the requested material.</li><li data-bbox="540 497 1438 592">b. Multiplies the number of hours by the hourly wage of the lowest paid full-time employee capable of performing the aforementioned tasks.</li><li data-bbox="540 632 1438 726">c. Adds the cost of copying/scanning (staff time and paper costs will be itemized separately). Any copying/scanning charges for off-site copies are to reflect the actual costs.<ul style="list-style-type: none"><li data-bbox="597 766 1458 894">1. Off-site copies/scanning are documents that require duplication by a private copy center. Any records larger than 8½" x 11", such as maps, photographs, or color copies, may require off-site copying/scanning.</li></ul></li><li data-bbox="540 934 1390 961">d. E-mails the cost estimate to the Division Central FOIA Liaison.</li></ul>

Step	Who	Does What
18.	Division Central FOIA Liaison	<p>E-mails a cost estimate to the FOIA Requester and asks whether they want to proceed with invoicing.</p> <p>If the FOIA Requester wants to proceed, prepares and sends an invoice.</p> <ul style="list-style-type: none"> <li>a. If the cost is less than \$50, prepares an invoice pursuant to Division/Office procedures.                             <ul style="list-style-type: none"> <li>1. Invoice must include the “fee appeal” information.</li> <li>2. Invoice must contain “a best efforts estimate” about the time frame to provide the records. This is non-binding, but must be based on the nature of the request.</li> <li>3. Do not mail documents until notification of receipt of the final payment by cashier’s office.</li> <li>4. Outstanding invoices will be reviewed pursuant to Division/Office procedures.</li> </ul> </li> <li>b. If the cost is \$50 or more, sends invoice pursuant to Division/Office procedures, requesting a good faith deposit of one-half of the total estimated fee prior to processing the request.                             <ul style="list-style-type: none"> <li>1. Invoice must include the “fee appeal” information.</li> <li>2. Invoice must contain “a best efforts estimate” about the time frame to provide the records. This is non-binding, but must be based on the nature of the request.</li> </ul> </li> </ul> <p><u>NOTE:</u> New FOIA requests must be processed even if the FOIA Requester has outstanding invoices.</p> <ul style="list-style-type: none"> <li>a. If a FOIA request is canceled 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.</li> <li>b. If a FOIA request is canceled after mailing the good faith deposit invoice, no additional follow up is necessary.</li> </ul>



19.	FOIA Requester	<p>Upon receiving the total estimated cost invoice or the good faith deposit invoice from the Division Central FOIA Liaison, may appeal the estimate. The appeal must be in writing and sent to:</p> <p style="text-align: center;">Administration Division Deputy Director Department of Environmental Quality P.O. Box 30473 Lansing, Michigan 48909-7973.</p> <p>The writing must specifically state “fee appeal” and identify how the fee exceeds the amount permitted under the FOIA.</p> <p>The Administration Division Deputy Director must respond to the fee appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to the fee appeal may be extended by 10 business days.</p> <p>If a civil action is commenced against the DEQ, the FOIA request will be paused until the fee appeal has been resolved.</p>
20.	Administration Division Deputy Director	<p>Within 10 business days after receiving a fee appeal, shall:</p> <ul style="list-style-type: none"><li>a. Waive the fee;</li><li>b. Reduce the fee and indicate the specific basis that supports the remaining fee;</li><li>c. Uphold the fee and indicate the specific basis that supports the fee; or</li><li>d. Issue a notice extending for not more than 10 business days the period to respond, including why the extension is necessary.</li></ul>

21.	FOIA Liaison	<p>Upon notification of receipt of the good faith deposit:</p> <ul style="list-style-type: none"> <li>a. Within a reasonable timeframe, notifies DEQ staff to identify, locate and appropriately review responsive records.</li> <li>b. Copies requested records after DEQ staff completes their review. It is expected that most responses will be completed in less than 10 business days.                             <ul style="list-style-type: none"> <li>1. If copying requested records will take more than 10 business days, the FOIA Liaison must notify the FOIA Requester of the expected time frame to copy all requested records.</li> <li>2. Notifies the Division Central FOIA Liaison of the final cost.</li> <li>3. The Division Central FOIA Liaison will prepare a final invoice, according to Division/Office procedures and e-mail/transmit it to the FOIA Requester.</li> </ul> </li> <li>c. Upon receipt of notification from the cashier's office of final payment:                             <ul style="list-style-type: none"> <li>1. Division Central FOIA Liaison will notify the applicable FOIA Liaison(s) to mail/transmit all responsive records within 10 business days.</li> </ul> </li> <li>d. After the final invoice is e-mailed, no additional follow up is necessary.</li> <li>e. Outstanding invoices will be reviewed pursuant to Division/Office procedures.</li> <li>f. Upon nonpayment of an outstanding invoice, duplicated records may be disposed of one year after the date of the final invoice.</li> </ul>
22.	DEQ Staff	<p>Works with FOIA Liaison to identify, locate and appropriately review responsive records within a reasonable timeframe.</p>
23.	FOIA Liaison	<p>Upon receipt of notification of final payment on a FOIA request, sends records to the FOIA Requester within 10 business days in the most economical manner.</p>

24.	FOIA Requester	<p>May appeal the records do not exist denial or the partial denial by either of the following:</p> <p>a. Appeal the decision in writing to:</p> <p style="padding-left: 40px;">Administration Division Deputy Director                  Department of Environmental Quality                  P.O. Box 30473                  Lansing, Michigan 48909-7973.</p> <p>The writing must specifically state the word “appeal” and identify the basis for which the disclosure determination should be reversed.</p> <p>The Administration Division Deputy Director, or her delegated designee, must respond to the appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to the appeal may be extended by 10 business days.</p> <p>b. Commence a civil action in the court of claims within 180 days after the date of the final determination to deny the request. If the FOIA Requester prevails in such an action, the court can award reasonable attorney fees, costs, disbursements, and possible damages.</p>
25.	DEQFOIA Team	<p>Reviews and updates hourly wage and per-page rates on an annual basis, as necessary. The hourly wage rate will be based on the lowest paid full-time public body employee capable of retrieving the information.</p>
26.	DEQFOIA Team	<p>Retains all FOIA requests on file for no less than one year.</p>

**LINKS TO ADDITIONAL INFORMATION:**

[DEQ FOIA Web site](#)

[DEQ Office Locations](#)

[DEQ FOIA Liaisons](#)

[DEQ FOIA Standard Costs](#)

## APPROVING AUTHORITY

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Amy Epkey, Administration Deputy Director

## HISTORY

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Policy No.	Action	Date	Title
01-006	Created	11/07/1997	Disclosure of Public Records: Freedom of Information Act Requests
01-006	Revised	06/04/2009	Same as above
01-006	Revised	06/12/2014	Same as above
01-006	Revised	07/23/2014	Same as above
01-006	Revised	06/07/2016	Same as above
01-006	Revised	06/29/2018	Same as above

## CONTACT/UPDATE RESPONSIBILITY

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Any questions or concerns regarding this policy should be directed to the DEQFOIA Team at [DEQFOIA@michigan.gov](mailto:DEQFOIA@michigan.gov)

*A DEQ policy and procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law. DEQ staff shall follow the directions contained in this document.*