



DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURE

Subject: Disclosure of Public Records:
Responding to Freedom of Information Act Requests

Number: 01-006

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Category: Internal/Administrative External/Non-Interpretive External/Interpretive
Type: Policy Procedure Policy and Procedure

A Department of Environmental Quality (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.

ISSUE:

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 the FOIA requests.

AUTHORITY:

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

DEFINITIONS:

“Central FOIA Liaison” – Lansing staff within each division/office responsible for the overall coordination of the FOIA request response.

“Correspondence” – Any written communication, regardless of transmission, such as a letter, fax, or e-mail.

“Denial Appeal” – An appeal of a denial or partial denial letter or e-mail issued by the FOIA Coordinator.

“Fee Appeal” – An appeal of the total estimated cost or the Good Faith estimate.

“FOIA Coordinator” – The individual designated by a public body in accordance with Section 6 of Michigan's FOIA (MCL 15.236) to accept and process requests for public records.

“FOIA Liaison” – The person who fulfills the FOIA requests.

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“FOIA Request” – 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” – The person who submits a written request for information to the DEQ.

“Public Record” – 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” – 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 general public, the DEQ does not waive, reduce, or exempt the fee solely on the basis of 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:

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. To ensure accurate and timely responses to FOIA requests, all FOIA requests must be sent to the FOIA Coordinator in the Office of Environmental Assistance (OEA), DEQ, for processing. The FOIA requests must be e-mailed to DEQFOIA@michigan.gov.

PROCEDURES: Responding to a Request for Copies of DEQ Records

Step	Who	Does What
1	FOIA requester	<p>Submits a written FOIA request to the DEQ FOIA Coordinator:</p> <p>DEQ FOIA Coordinator P.O. Box 30457 Lansing, Michigan 48909-7957 DEQFOIA@michigan.gov</p> <p>Additional information is located on the DEQ FOIA Web site, www.michigan.gov/deqfoia. You may cancel FOIA request at any time. Send an e-mail to DEQFOIA@michigan.gov and indicate the FOIA tracking number.</p>

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Step	Who	Does What
2	Appropriate 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	OEA FOIA Team	<p>Reviews the FOIA request to determine if the request can be filled.</p> <ol style="list-style-type: none"> a. If yes, proceeds to Step 4. b. If no, logs the FOIA request into the FOIA database: <ol style="list-style-type: none"> 1. Issues "Records Do Not Exist" denial e-mail/letter (EQ1048a); or 2. Issues "Insufficient Information" e-mail/letter (EQ1048b).
4	OEA FOIA Team	<p>Reviews the FOIA request to determine which division(s)/office(s) may have responsive records.</p> <ol style="list-style-type: none"> 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. b. If a fee waiver is requested, indicate on PDF if waiver is approved or denied. b. Logs the FOIA request into the FOIA database.
5	OEA FOIA Team	E-mails the FOIA request to the FOIA Liaison(s) in the appropriate division(s)/office(s) and/or district/field office(s).
6	OEA FOIA 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	FOIA Liaisons and/or Appropriate DEQ Employee	<p>Reviews the FOIA request within five business days with the appropriate program staff to determine if the FOIA request is specific enough to locate the desired record(s) (see FOIA Section 3[1]) and where the record(s) is/are located.</p> <ol style="list-style-type: none"> a. Forwards the FOIA request to the appropriate staff for processing. Proceeds to Step 8 or 9. b. If the record(s) is/are exempt, in whole or in part, proceeds to Step 12.

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Step	Who	Does What
8	FOIA Liaisons and/or Appropriate DEQ Employee	If the FOIA request is so broad that it encompasses a large volume of information, or if the FOIA request is not specific enough: <ol style="list-style-type: none"> a. Within five business days, estimates the total cost to fulfill the FOIA request, and if the total cost is \$100 or more, proceeds to Step 13. b. The Central FOIA Liaison will contact the requester to clarify the FOIA request or, pursuant to division/office procedures, the FOIA Liaison may contact the FOIA requester. c. If the requester subsequently cancels the FOIA request, the FOIA Liaison will notify the Central FOIA Liaison. The Central FOIA Liaison notifies the FOIA Coordinator, who issues the Confirm Request Cancellation letter or e-mail (EQP1444).
9	FOIA Liaisons	If no records exist, notifies Central FOIA Liaison as appropriate.
10	Central FOIA Liaison	If no records exist, notifies FOIA Coordinator.
11	FOIA Coordinator	Sends the Records Don't Exist Denial to FOIA requester.
12	Appropriate DEQ Employee	Reviews the FOIA request within five business days to determine whether requested record(s) is/are exempt from disclosure. <ol style="list-style-type: none"> a. If the record is part of ongoing litigation and the FOIA requester is named in the lawsuit, contacts the FOIA Coordinator and notifies Central FOIA Liaison as appropriate. <ol style="list-style-type: none"> 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 12c. 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 FOIA Coordinator and notifies Central FOIA Liaison as appropriate. c. If the requested record(s) is/are not exempt from disclosure, proceeds to Step 14 or 15.
13	FOIA Coordinator	Sends partial denial to FOIA requester.
14	FOIA Liaisons	If records exist and the total estimated cost is less than the DEQ's minimum charge of \$20.00, sends records to requester in the most efficient and economical manner. It is expected that most of the responses will be sent in less than 10 business days. Notifies Central FOIA Liaison as appropriate.

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Step	Who	Does What
15	FOIA Liaisons	<p>Coordinates on-site appointments if the FOIA requester elects to review the record(s) in person. 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"> a. The FOIA requester may be charged for the following costs: <ul style="list-style-type: none"> 1. Costs associated with the copying/scanning of the records performed by DEQ staff. 2. Staff time for the search, retrieval, examination, review, and separation of exempt and nonexempt information. 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"> 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. ii. On-site appointments should be arranged with the appropriate staff to ensure that the requested records and staff are available. b. FOIA requesters may utilize his or her personal equipment to videotape, copy, and/or scan files at no charge.
16	FOIA Liaisons	<p>Estimates and calculates the fee to be charged for providing the requested record(s).</p> <ul style="list-style-type: none"> 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. b. Multiplies the number of hours by the hourly wage of the lowest paid full-time employee capable of performing the aforementioned tasks. 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"> 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. d. E-mails the cost estimate to the Central FOIA Liaison.

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Step	Who	Does What
17	Central FOIA Liaisons	<p>E-mails cost estimate to FOIA requester and asks whether they want to proceed with invoicing. If the FOIA requester wants to proceed, prepares and sends invoice.</p> <ol style="list-style-type: none"> a. If the cost is less than \$100, prepares an invoice pursuant to division/office procedures. <ol style="list-style-type: none"> 1. Invoice must include the “fee appeal” information. 2. Do not mail documents until notification of receipt of the final payment by cashier’s office. 3. Outstanding invoices will be reviewed pursuant to division/office procedures. b. If the cost is \$100 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. <ol style="list-style-type: none"> 1. Invoice must include the “fee appeal” information. 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. <p>NOTE: New FOIA requests must be processed even if the requester has outstanding invoices.</p> <ol style="list-style-type: none"> a. If a FOIA request is canceled after receipt of the Good Faith Deposit, the actual costs incurred up to the date of cancelation will be subtracted from the Good Faith Deposit. The remaining balance of the Good Faith Deposit will be refunded. b. If a FOIA request is canceled after mailing the Good Faith Deposit invoice, no additional follow up is necessary.
18	FOIA Requester	<p>Upon receiving the total estimated cost invoice or the Good Faith Deposit invoice from the Central FOIA Liaison, may appeal the estimate.</p> <p>Appeal this decision in writing to the Chief of the Office of Environmental Assistance, Department of Environmental Quality, P.O. Box 30457, Lansing, Michigan 48909-7957. The writing must specifically state “fee appeal” and identify how the fee exceeds the amount permitted under the FOIA. The Chief of the Office of Environmental Assistance 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 an action is commenced against the DEQ, the FOIA request will be paused until the fee appeal has been resolved.</p>

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Step	Who	Does What
19	OEA Chief	Within 10 business days after receiving a “fee appeal,” shall: <ol style="list-style-type: none"> a. Waive the fee; b. Reduce the fee and indicate the specific basis that supports the remaining fee; c. Uphold the fee and indicate the specific basis that supports the fee; or d. Issue a notice extending for not more than 10 business days the period to respond, including why the extension is necessary.
20	FOIA Liaisons	Upon notification of receipt of the Good Faith Deposit: <ol style="list-style-type: none"> a. Within a reasonable time for response after the Good Faith Deposit is received, duplicates requested records. It is expected that most of the responses will be completed in less than 10 business days. <ol style="list-style-type: none"> 1. If the duplication of requested records takes more than 10 business days, staff must notify requester of expected time frame to duplicate all requested records. 2. Notifies the Central FOIA Liaison of the final cost. 3. The Central FOIA Liaison will prepare final invoice, according to division/office procedures and e-mail it to requester. b. Upon receipt of notification from the cashier’s office of final payment: <ol style="list-style-type: none"> 1. Central FOIA Liaison will notify FOIA Liaisons to mail all responsive records within 10 business days. c. After the final invoice is e-mailed, no additional follow up is necessary. d. Outstanding invoices will be reviewed pursuant to division/office procedures. e. Upon nonpayment of the outstanding invoice, duplicated records may be disposed of one year after date of invoice.
21	FOIA Liaisons	Upon receipt of notification of final payment for FOIA request, sends records within 10 business days in the most economical manner.

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Step	Who	Does What
22	FOIA Requester	<p>May appeal the records don't exist denial or the partial denial by either of the following:</p> <ul style="list-style-type: none"> a. Appeal this decision in writing to the Chief of the Office of Environmental Assistance, Department of Environmental Quality, P.O. Box 30457, Lansing, Michigan 48909-7957. The writing must specifically state the word "appeal" and identify the basis for which the disclosure determination should be reversed. The Chief of the Office of Environmental Assistance, or his/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. b. Commence a civil action in circuit court 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 is to award reasonable attorney fees, costs and disbursements, and possible damages.
23	FOIA Coordinator	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.
24	FOIA Coordinator and FOIA Liaisons	Shall retain the "official copy" of all FOIA requests on file for no less than one year.

LINKS TO ADDITIONAL INFORMATION:

[DEQ FOIA Web site](#)

[DEQ Office Locations](#)

[DEQ FOIA Liaisons](#)

[DEQ FOIA standard costs](#)

Approved: _____



Keith Creagh, Director