



DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURE

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

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, Public Act 442 of 1976, 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” – May appeal the denial or partial denial.

“Fee Appeal” – May appeal the total estimated cost or the good faith estimate.

“FOIA” – The Freedom of Information Act, 1976 PA 442, as amended.

“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.

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 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	Submits a written FOIA request using form EQP1046E to the DEQ FOIA Coordinator: DEQ FOIA Coordinator P.O. Box 30457 Lansing, Michigan 48909-7957 DEQFOIA@michigan.gov Additional information and FOIA form is located on the website below: FOIA Information May cancel FOIA request at any time. Send an e-mail to DEQFOIA@michigan.gov , indicate the FOIA tracking number and reason for cancellation.

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Step	Who	Does What
2	Appropriate DEQ Employee	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
3	Appropriate DEQ Employee	Receives an electronic FOIA request: immediately forwards it to the FOIA Coordinator using the following address: DEQFOIA@michigan.gov
4	OEA FOIA Team	Reviews the FOIA request to determine if the request can be filled. <ol style="list-style-type: none"> a. If yes, proceeds to Step 5A. b. If no, logs the FOIA request into the database: <ol style="list-style-type: none"> 1. Issues Records Do Not Exist Denial e-mail/letter (EQP1048a) 2. Issues Insufficient Information e-mail/letter (EQP1048b)
5	OEA FOIA Team	Reviews the FOIA request to determine which division(s)/office(s) may have responsive records. <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. Logs the FOIA request into the database.
6	OEA FOIA Team	Forwards the FOIA request to the appropriate division(s)/office(s) and/or district/field office(s).
7	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, and due date.
8	FOIA Liaisons and/or Appropriate DEQ Employee	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. <ol style="list-style-type: none"> a. Forwards the FOIA request to the appropriate staff for processing. Proceeds to Step 9A or 10A. b. If the record(s) is/are exempt, in whole or in part, proceeds to step 10A.

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Step	Who	Does What
9	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, notifies the Central FOIA Liaison. 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 (EQP1444).
10	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. b. 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 10A.c. c. 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 [MCL 15.243]), informs the FOIA Coordinator and notifies Central FOIA Liaison as appropriate. d. If the requested record(s) is/are not exempt from disclosure, proceeds to Step 12A or 13A.
11	FOIA Liaisons	If no records exist, notifies Central FOIA Liaison as appropriate.
12	FOIA Liaisons	If records exist and the estimated total cost is less than the minimum charge established by the division/office, send records to requester in the most efficient and economical manner. Notifies Central FOIA Liaison as appropriate.

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Step	Who	Does What
13	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 during 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 clerical 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. a. FOIA requesters may utilize his or her personal equipment to videotape, copy, and/or scan files at no charge. b. Frequent FOIA requesters may take copies with them after the on-site file review, even if the cost is over the invoicing threshold. Refer to the Frequent FOIA Requesters Definition for additional information.

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Step	Who	Does What
14	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 8 ½" 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.e. The cost estimate e-mail must include the "fee appeal" information.

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Step	Who	Does What
15	Central FOIA Liaisons	<p>Prepares invoice.</p> <ul style="list-style-type: none"> a. If the cost is less than \$100, prepares an invoice pursuant to division/office procedures. <ul 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. 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. <ul 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> <ul style="list-style-type: none"> a. If a FOIA request is cancelled 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. b. If a FOIA request is canceled after mailing the Good Faith Deposit, no additional follow up is necessary.
16	FOIA requester	<p>Upon receiving the total estimated cost or the good faith estimate from the Central FOIA Liaison, may appeal the estimate.</p> <p>Appeal this decision in writing to the Chief of the Administration Division, Department of Environmental Quality, P.O. Box 30473, Lansing, Michigan 48909-7973. The writing must specifically state "fee appeal," and must identify how the estimated fee exceeds the amount permitted under the FOIA. The Chief of the Administration Division must respond to your fee appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your 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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17	Chief, Administration Division	Within 10 business days after receiving a “fee appeal” for the total estimated cost or the good faith deposit, shall (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; (d) issue a notice extending for not more than 10 business days the period to respond including why the extension is necessary.
18	FOIA Liaisons	<p>Upon notification of receipt of the Good Faith Deposit:</p> <ul 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 done in less than 10 business days. <ul style="list-style-type: none"> 1. If the duplication of requested records takes more than 10 business days, staff must notify requestor 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. b. Upon receipt of notification of final payment: <ul 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 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.
19	FOIA Liaisons	Upon receipt of notification of final payment for all FOIA requests, sends records within 10 business days in the most economical manner.

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Step	Who	Does What
20	FOIA requester	<p>May appeal the records don't exist denial or the partial denial by either of the following:</p> <p>Appeal this decision in writing to the Director of the Department of Environmental Quality, P.O. Box 30473, Lansing, Michigan 48909-7973. The writing must specifically state the word "appeal," and must identify the reason or reasons you believe the denial should be reversed. The head of the department, or his designee, must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.</p> <p>Commence a civil action in the circuit court within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements, and possible damages.</p>
21	FOIA Coordinator	<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>
22	FOIA Coordinator	<p>Shall retain the "official copy" of all FOIA requests on file for no less than one year.</p>

APPENDICES:

[DEQ FOIA Web site](#)

[DEQ Office Locations](#)

[DEQ FOIA Liaisons](#)

[DEQ FOIA standard costs](#)