

FREEDOM OF INFORMATION ACT POLICIES AND PROCEDURES

Policy

It is the public policy of the State of Michigan and the Michigan Department of Talent and Economic Development (TED) that all persons, except those persons incarcerated in a state or local correctional facility, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the Freedom of Information Act (FOIA). Citizens shall be informed so that they may fully participate in the democratic process.

General Information

- “Public record” is defined by the FOIA as “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software.” The FOIA separates public records into two classes: Those that are exempt from public disclosure under section 13(1) of the act; and those that are not exempt from public disclosure under section 13(1), and are subject to disclosure under the act.
- “Writing” is defined by the FOIA as “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, drums, or other means of recording or retaining meaningful content.” TED regards e-mail to be a means of recording or retaining meaningful content.
- “Written request” is defined by the FOIA as “a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.”
- “FOIA coordinator” is defined by the FOIA as an individual designated by a public body to accept and process requests for public records under the act. The FOIA Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

Requirements

- All TED employees must always work through the assigned Freedom of Information Act Coordinator in responding to such requests to ensure that consistent and correct responses are provided to the public.
- Any request for information may be considered a FOIA request and within the request, includes words such as “freedom of information”, “information”, “FOIA”,

“copy”, or a recognizable misspelling of such within the first 250 words of the request.

- All FOIA requests must be received in writing and submitted to the attention of the FOIA Coordinator by mail at 300 North Washington Square, Lansing, MI 48913 or by email to divirgiliom@michigan.org or by fax at (517) 241-5968

Procedures

<u>Responsibility</u>	<u>Action</u>
Requester	1. A person desiring to inspect or receive a copy of a public record must make a written request for the public record. The request must describe the record sufficiently to enable the FOIA Coordinator to find the public record. A written request may be made by U.S. Postal Service, facsimile, electronic mail, or other electronic transmission. Requesters must provide their name, address and date of request so that TED can document that a request has been made and properly processed and assist TED in determining excessive requests for the same information.
Employee	2. A request for a public record received by any TED employee immediately shall be delivered to the FOIA Coordinator.
FOIA Coordinator	3. The FOIA Coordinator must issue a written notice in response to a FOIA request within five (5) business days after receiving the request. The written notice issued in response may extend for not more than ten (10) business days the period during which the FOIA Coordinator shall issue a second written notice that grants the requests, or denies the request in full or in part, with an explanation for the denial, and of the person's remedial rights under the FOIA. The notice extending the period for a response to the request shall specify the reasons for the extension, and the date by which the FOIA Coordinator will issue the second written notice. Failure to respond within the above specified time periods can lead to a reduction in fees of 5% per day up to a total reduction of 50% if the late response was willful and intentional.
Employee	4. To ensure that the statutory time limits are met, the employee immediately shall provide the FOIA Coordinator all original records, or copies as directed by the FOIA Coordinator, contained in local files.
FOIA Coordinator	5. The FOIA Coordinator is responsible for determining whether a FOIA request is denied in full or in part, and shall sign the written notice of denial. By way of example, and not limitation, the FOIA Coordinator may deny a request for the following reasons: (a) the information is of personal nature, where the public disclosure would constitute a clearly unwarranted invasion of an individual's privacy; (b) information or records are subject to the attorney-client privilege; or (c) communication within a public body of between public bodies of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to a final agency action or policy and that the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. Departments may give

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	<p>their recommendation for full or partial disclosure denial of any public record. The final authority, however, rests with the FOIA Coordinator or with the Director upon appeal.</p> <p>6. Subject to Section 4 of the FOIA, the FOIA Coordinator shall determine the fees for search, examination, review and the deletion and separation of exempt from nonexempt information; and the costs of copying and mailing. The FOIA Coordinator will work with staff to determine the fees that may be charged. Individuals who submit an affidavit stating that they are receiving public assistance or showing inability to pay costs because of indigency shall not be charged for the first \$20.00 of the fee for each request. Persons representing public interest groups may have the entire fee waived. Determination of eligibility for fee waivers shall be made by the Director. At the time that a FOIA request is made, the FOIA Coordinator may request a good faith deposit not to exceed one-half of the total fees and costs from the person requesting the public record(s), if the total fees and costs exceed \$50.00. The FOIA Coordinator will notify employees when payment is received. In addition, the FOIA Coordinator will send instructions regarding the request to employers via email which will include, instructions as to when to provide the public records; request that employees address special circumstances related to requests (i.e., responses that will have a large number of documents, etc.). Upon receiving notice, employees must provide the public records to the FOIA Coordinator by the date requested of them by the FOIA Coordinator or sooner when possible.</p> <p>7. Pursuant to Section 10A of the FOIA, the requester who has a good faith belief that a fee for public records is unreasonable may (a) submit a written appeal to the head of TED that specifically states the word "appeal" and identifies how the fee exceeds the amount permitted by the policies and procedures of Section 4 of the FOIA, or (b) bring a court action within 45 days after receiving the notice of the required fee. If a civil action is commenced against TED, TED is not obligated to complete the processing of a written request for the public record at issue until the court resolves the fee dispute.</p> <p>8. Where a requesting person elects to inspect public records, the FOIA Coordinator shall determine what constitutes a reasonable opportunity for inspection and examination of existing, nonexempt public records, and shall furnish reasonable facilities for inspection during usual business hours. TED employees shall protect public records from loss, unauthorized alteration, mutilation, or destruction. Where original public records are involved in the inspection, the employee shall supervise the inspection of the original public records. Requestors who inspect public records onsite shall: (1) be provided designated space including a table and chair; (2) review the documents in the presence of a TED employee; (3) not be allowed to remove documents from files or from the premises unless those documents are copied specifically for the requester by TED staff; and (4) TED may charge a reasonable fee for an employee assisting and overseeing the process of the requester's record search,</p>

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	necessary copying and examination of the public records.
Employees	9. Employees are advised that records in TED files from other agencies, public or private, generally constitute public records of TED subject to the FOIA. In order to assist the FOIA Coordinator in determining whether the records might be subject to confidentiality under federal or state law, or under another basis for exemption from public disclosure, employees shall segregate or otherwise identify records that originated from another agency. Likewise, TED records possessed by other public agencies might be subject to disclosure pursuant to FOIA requests made to those agencies.
Requester	10. If the FOIA Coordinator makes a final determination to deny all or a portion of a request, the requesting person has the option to submit a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial; or, within 180 days after the FOIA Coordinator's final determination to deny a request, commence an action in the appropriate to compel the public body's disclosure of the public records.
Director	11. It is the responsibility of the Director of TED, or the Director's designee to respond to written appeals of FOIA Coordinator's determinations to deny requests for disclosure under the FOIA. Within ten (10) business days after receiving a written appeal, the Director must do one of the following: <ul style="list-style-type: none"> a) Reverse the disclosure denial. b) Issue a written notice to the requesting person upholding the disclosure denial. c) Reverse the disclosure denial in part, and issue a written notice upholding the disclosure denial in part. d) Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which a written notice shall issue under subsections a, b or c.

Record Retention

All written FOIA requests and responses for public records shall be kept on file no less than one (1) year.

Subscriptions

A requester has the right to subscribe to future issuance of public records which are created, issued or disseminated on a regular basis, i.e., monthly meeting minutes, news periodicals and regularly produced documents that provide status updates. A subscription is valid up to six (6) months, at the request of the subscriber, and is renewable.

- a. Subscription requests shall be processed following normal procedures for processing FOIA requests.
- b. Requesters shall be placed on a mailing list, to receive regular updates of materials relative to the respective FOIA request. Non-exempt information will be released, as it becomes available.

Fee Schedule

The TED fee schedule specifies the rates that will be charged for labor, copying, and other necessary expenses permitted under the FOIA. The fee schedule is available from the FOIA Coordinator and is updated periodically.

Reference

P.A. 442 of 1976, MCL 15.231 et seq.

Contact/Update Responsibility

Any questions or concerns regarding this policy should be directed to the FOIA Coordinator.

TED FOIA Coordinator
Brad Heffner
517.373.2022
heffnerb@michigan.org

TED Assistant FOIA Coordinator
Adam Robach
517.241.2830
robacha@michigan.org

MCL 15.234 Section 4, Freedom of Information Act 442 of 1976, as amended, permits TED to charge a fee for public record **search**, necessary **copying** of public record **for inspection**, or **for providing** a copy of the public record.

Table 1 – LABOR RATES	
Labor Rate – when a TED employee is required to search, review, examine, prepare, inspect, delete and separate exempt from non-exempt material, and make the non-exempt material available for release.	\$30.11/Hour

A fee shall not be charged for the cost of search, examination, review and the deletion and separation of exempt from non-exempt information as provided in the Freedom of Information Act, Act No. 442 of P.A. of 1976, Section 15.234, Sec. 4(3), unless **failure to charge a fee would result in unreasonably high costs to TED**, because of the nature of the request in this particular instance, and TED identifies the nature of the unreasonably high costs.

It is TED policy that the cost of labor and other labor-related costs will be charged for the search, examination, review, deletion and the separation of exempt from non-exempt information when a request requires more than a total of one (1) hour of an employee’s time in filling such a request.

Table 2 – PHOTOCOPYING/FACSIMILE	
1. Photocopying performed by a TED employee – shall be at a per page (TED will utilize the most economical means available for making copies including double-sided printing, if cost saving is available) rate, plus labor costs for employee’s time at copier.	\$.10 per page
2. Facsimile performed by a TED employee – shall be at a per page rate, plus labor costs for employee’s time at the fax machine.	\$2.00 per page
3. Photocopying and/or Facsimile performed by an outside copy service including large documents.	\$ Actual Costs

Table 3 – ELECTRONIC AND MAILING	
<p>1. Electronic Copies – Actual retrieval and printing time based upon the labor rates as established above, plus the per electronic rate. CD ROM or any other electronic medium used as a vehicle to provide the information. Machine time may only be charged if the costs of the services of a particular computer are paid by TED based upon an incremental charge to TED for additional computer usage.</p>	<p>\$10.00 per Electronic plus actual staff time to reproduce (see Labor Rate Schedule)</p>
<p>2. Mailing or Shipping – Mailing costs can include actual costs, insurance or other charges related to the mailing and shipping of the material to the requester. It shall be based on the current U.S. Postal rates for the actual size and weight of the material sent.</p>	<p>\$ Actual Costs</p>

Pursuant to Section 4(3) of the Freedom of Information Act P.A. 442 of 1976, Section 15.234, fees shall be uniform and not dependent upon the identity of the requesting person.