Michigan Department of Licensing and Regulatory Affairs (LARA) Freedom of Information Act (FOIA) Procedures and Guidelines

Procedure: Michigan Freedom of Information Act Requests
Effective Date: September 10, 2024
Supersedes: V1 (10/01/2015), V2 (03/14/2018), V3 (08/14/2018), V4 (08/22/2019), V5 (01/27/2020)

A. Appointment of FOIA Coordinator.

In accordance with section 6 of the FOIA, MCL 15.236, the Department of Licensing and Regulatory Affairs (Department) has appointed a FOIA Coordinator who can be reached at the FOIA Office at the URL and address below.

B. Appointment of Transparency Liaison.

In accordance with Executive Directive 2019-11, the Department has appointed a Transparency Liaison. The Department's Transparency Liaison shall:

1. Assist members of the public seeking a public record from the department or agency in navigating the requirements of the Freedom of Information Act or other law applicable to public records, including by providing educational materials on the website of the department or agency.

2. Assist members of the public seeking to participate in a public meeting held by a board or commission within the department or agency in a manner that complies with the Open Meetings Act, including by providing educational materials on the website.

3. Make recommendations to the department and agency for compliance with this directive, to reduce costs relating to public records requests, and to encourage greater transparency.

4. Advocate for the disclosure of public records quickly and in a cost-efficient manner.

5. Advocate for transparency and procedures that encourage public participation in public meetings.

6. Consult with the department or agency's Freedom of Information Act coordinator regarding compliance with this directive and the Freedom of Information Act.

7. Recommend changes to the department's or agency's procedures and guidelines and written public summary of the procedures and guidelines for the department under section 4 of the Freedom of Information Act, MCL 15.234.

The Department's Transparency Liaison may be contacted at LARA-Transparency-Liaison@michigan.gov.

C. Submission of FOIA Request.

FOIA requests to the Department must be in writing and can be sent to its central FOIA Office via the online portal,email, or US mailto:

Online Portal: www.michigan.gov/larafoia

Email: LARAFOIAInfo@michigan.gov

US Mail: State of Michigan
Department of Licensing and Regulatory Affairs
c/o FOIA Coordinator
Ottawa Bldg., 4th Floor
P.O. Box 30004
Lansing, MI 48909

A FOIA request must include all the following information:

- Individual (other than one who claims indigency)
  - Complete name
  - Address – Must be written in compliance with United States Postal Service addressing standards.
  - Contact information – Must include a valid telephone number or electronic mail address.
- Person (other than individual)
  - Complete name of person's agent
  - Address of person's agent – Must be written in compliance with United States Postal Service addressing standards.
  - Contact information of person's agent – Must include a valid telephone number or electronic mail address.

D. Immediately Forward FOIA Request.

Any employee of the Department who receives a written request for a public record must immediately forward that request to the Department's FOIA Office at LARAFOIAInfo@michigan.gov. If a Department employee receives a written request for a public record that is delivered unnoticed to a spam or junk-mail folder, the employee must record the date and time the written request is delivered to the spam or junk-mail folder and date and time the employee first becomes aware of the written request. The employee must forward those dates and times to the Department's FOIA Office with the written request.

E. Request Response Time.

Unless otherwise agreed to in writing by the person making the request, the Department shall make an initial response to a request for a public record within 5 business days. The initial response may grant the request; issue a written notice denying the request; grant the request in part and deny the request in part; or, issue a notice extending for not more than 10 business days the period during which the Department shall provide a response. MCL 15.235(2). Due to the short statutory time period within which the Department must issue a

written notice in response to the FOIA request, it is imperative that there be no delay in complying with the Departmental procedures and guidelines.

F. Response to a FOIA Request; the Process.

The Department has a centralized FOIA Office that will coordinate responses to FOIA requests and assist with providing status updates to the requester. A FOIA request, once received by the Department's FOIA Office, will be routed to the appropriate agencies within the Department who may possess the requested public records. The agency's FOIA liaison will then provide a cost estimate to fulfill the request, if applicable. Note that if the total cost estimate exceeds fifty dollars a deposit will be required to initiate processing; see below for additional information regarding fees and deposits. Upon payment by requester of a required good faith deposit, the agencies begin processing the request. After processing is complete, the actual cost of fulfillment will be calculated, and a final invoice will be provided to the requester. After the final invoice is paid, the records will be released to the requester often within five business days. If a request is denied, in full or in part, the Department will provide the requester an explanation of the basis for the denial under the FOIA and give notice to the requester of his or her remedial rights. MCL 15.235(5).

G. Abandoned Request

If the estimated costs to process a request exceeds $50.00, a 50% good faith deposit will be required. Upon receipt of the estimated costs, a requester can choose to pay that 50% or withdraw their request. The Department must receive the required deposit within 45 days after the statutorily-determined receipt of good faith estimate notice, otherwise the FOIA request is considered abandoned and the Department will not be required to fulfill the request.

H. Notification to agencies of a FOIA Request.

Upon receipt of a FOIA request, the Department's FOIA Office staff will notify all applicable agencies that may possess records responsive to the FOIA request to begin processing.

I. Agency/Bureau Response to LARA FOIA Office.

For responses sent by the Department's FOIA Office, as soon as possible, but not later than two business days before the FOIA response is due, the agency's response is due to the Department's FOIA Office. The agency's Director is ultimately responsible for the accuracy of an agency's responsive documents/information when it is provided to the Department's FOIA Office.

J. Assessment of Fees for a FOIA Request.

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). LARA's threshold to charge a fee is processing costs estimated to exceed $20.00. MCL 15.234(1).

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

1. That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The Department shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the instance. Labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. MCL 15.234(1)(a).

2. That portion of labor costs, including necessary review, directly associated with the separating and deleting of exempt information from nonexempt information. The Department shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information. If the Department does not employ a person capable of separating and deleting exempt information from nonexempt information in a particular instance, it may use contractors and charge no more than an amount equal to 6 times the state minimum hourly wage determined by MCL 408.934. Labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. MCL 15.234(1)(b).

3. For public records provided to the requestor on non-paper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. MCL 15.234(1)(c).

4. For paper copies of public records provided to the requestor, the actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper. The fee shall not exceed 10 cents per sheet of paper for copies of public records on 8 ½ by 11-inch paper or 8 ½ by 14-inch paper. The department shall utilize the most economical means available for making copies of public records, including using double-sided printing if cost saving. MCL 15.234(1)(d).

5. The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the internet or other electronic means as stipulated by requestor. The Department shall not charge more than the hourly wage of its lowest paid employee capable of necessary duplication or publication in the instance. MCL 15.234(1)(e).

6. The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. MCL 15.234(1)(f).

Additional guidelines regarding fees:

- Fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The Department may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. MCL 15.234(2).[Fee Itemization Form]

- Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed itemization. MCL 15.234(2).

- A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the Department determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. MCL 15.234(2).

- A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request by either:

    - An individual who submits an affidavit stating that the individual is indigent and receiving specific public assistance, or if not receiving public assistance, stating facts showing inability to pay the cost because of indigency, MCL 15.234(2)(a); or, [Indigency Affidavit]

    - A nonprofit organization formally designated by the state co carry out activities under subtitle C of the developmental disabilities' assistance and bill of rights act of 2000, and the protection and advocacy for individuals with mental illness act, if the request meets certain requirements. MCL 15.234(2)(b).

- If the Department does not respond to a written request in a timely manner, the Department shall:

    - Reduce the charges for labor costs by 5% for each day the Department exceeds the time permitted, with a maximum 50% reduction, if either the late response was willful and intentional or the written request included language that conveyed a request for information with the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy", or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page. MCL 15.234(9)(a). If a charge reduction is required it will be reflected on the detailed itemization of fees. MCL 15.234(9)(b).

- If a deposit that is required is not received by the Department within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the Department is no longer required to fulfill the request. MCL 15.234(14).

K. Deposit Requirements.

In either the Department's initial response or subsequent response, the Department may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate exceeds $50.00, based on a good-faith calculation of the total fee. The deposit must not exceed ½ of the total estimated fee, and the Department's request for a deposit must include a detailed itemization. MCL 15.234(8).

The time frame estimate is nonbinding 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 the state's public policy and the nature of the request in the particular instance. MCL 15.234(8).

L. Appeals of Fees and Disclosure Determinations.

If the Department makes a final determination to deny all or a portion of a request, the requesting party may do one of the following at his or her option, MCL 15.240(1):

1. Submit to the head of the Department, or his or designee, a written appeal that specially states the word "appeal" and identifies the reason or reasons for reversal of the denial.

2. Commence a civil action in the circuit court, or if the decision of the Department is at issue, the court of claims, to compel the Department's disclosure of the public records within 180 days after the Department's final determination to deny a request.

Within 10 business days after receiving a written appeal, the head of the Department, or his or her designee, shall do one of the following, MCL 15.240(2):

1. Reverse the disclosure denial.

2. Issue a written notice to the requesting person upholding the disclosure denial.

3. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

4. Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the Department, or his or her designee, shall respond to the written appeal. No more than 1 notice of extension may be issued for a written appeal.

Written appeals must be emailed to the appeals officer at LARAFOIAInfo@michigan.gov, or sent by mail to the Appeal Officer at PO BOX 30004, Lansing, MI 48909.