

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
POLICY AND PROCEDURES MANUAL

CHAPTER 9 **General Policies and Procedures** **Effective 08/27/2022**
SECTION 01 **Freedom of Information Services**
SUBJECT 04 **Freedom of Information Act**

901.04 **Freedom of Information Act**

REFERENCE: Michigan Freedom of Information Act (FOIA or Act), 1976 PA 442, MCL 15.231, *et seq.* <http://www.michiganlegislature.org/>, then search “Freedom of Information Act” in the Michigan Compiled Laws Search feature
Michigan Dept. of Technology, Management & Budget Administrative Guide to State Government: <https://www.michigan.gov/dtmb/policies/adminguide>
 • FOIA Procedure 2410.01
MDCR Service Center Manual Sections 4. K and L
 https://stateofmichigan.sharepoint.com/teams/insidecr/work/Service%20Center%20Manual/FOIA_Summary.pdf
402.06 Handling of Incoming Mail

POLICY: Requests for public records are promptly routed to the FOIA Coordinator IN ACCORDANCE WITH STATE LAW and handled in a timely fashion to comply with the Freedom of Information Act and the Administrative Guide to State Government FOIA Procedure 2410.01

Exceptions to this policy:

These records will be routinely provided at point of contact without charge.

- Materials published for public distribution
- Materials provided to further public process improvement
- Materials requested as part of the legislative or budget process

DEFINITIONS:

- **FOIA coordinator-** 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. MCL 15.232(f) and MCL 15.236.
- **Public record-** 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. This act separates public records into the following 2 classes: (i) Those that are exempt from disclosure under section 13. (ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act. MCL 15.232(i).
- **Writing-** A 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, hard drives, solid state storage components, or other means of recording or retaining meaningful content. MCL 15.232(l)

- **Written request-** A writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means. MCL 15.232(m)

GENERAL INFORMATION:

- Except as expressly provided in section 13 of the Act, MCL 15.243, a person has a right to inspect, copy, or receive copies of the requested public record of the public body.
- The MDCR has designated a FOIA Coordinator to receive, review and respond to all FOIA requests. The FOIA Coordinator is responsible for determining timely responses to all FOIA requests, including whether a record is exempt from disclosure. The Director of Compliance provides legal support to the FOIA team and serves as liaison to the Attorney General for FOIA related issues.
- The FOIA Coordinator may designate another individual to act on their behalf. MCL 15.236(3). A qualified person is always available to receive and process FOIA requests.
- All written requests to the MDCR for any public records as defined above meet the definition of a FOIA request. The request need not cite FOIA.

SUBMISSION OF FOIA REQUEST:

- A FOIA request to the MDCR must be in writing and **can** be sent to its FOIA Office by email, US mail, or fax to:

Email: MDCR-FOIA @michigan.gov

US Mail: Michigan Department of Civil Rights
Attn: FOIA Coordinator
3054 W. Grand Boulevard, Suite 3-600
Detroit, MI 48202

Fax: (313) 456-3721

- A FOIA request must describe the desired public record sufficiently to enable the FOIA Coordinator to find it. A written request must include all the following information:
 - Complete name
 - Mailing 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.
- **Verbal requests for public records are not accepted.** Employees must inform persons making verbal requests for public records that they must make the request in writing to the FOIA Coordinator and provide the contact information for the FOIA Coordinator.

- **It is highly recommended that all correspondence regarding FOIA requests be sent electronically to MDCR-FOIA @michigan.gov to avoid delay in processing.**

PROCEDURE:

FOIA Coordinator must:

- Receive, review, and provide timely responses to all FOIA requests.
- Ensure that all FOIA requests are date stamped with the date received in the FOIA office.
- Log all FOIA requests into CRIS. The FOIA coordinator must enter all relevant information, including the name and contact information of the requester, the date of the FOIA request, the date the FOIA request was received and by what means the request was received, the due date of a response, and the actual text of the request.
- Contact the division/unit that might possess records responsive to the request and provide instructions and deadlines for identifying and compiling responsive records.
- Conduct or supervise searches of CRIS, other databases, the Records Center and other MDCR sources.
- Identify FOIA requests of substantial interest and immediately notify appropriate leadership that potential follow-up inquiries may be forthcoming.
- Determine whether FOIA requests can be released or are exempt from release in full or in part.
- Issue a written response to the requestor, either granting, denying or partially granting and partially denying the request, or requesting an extension of up to ten additional business days by the fifth business day after the receipt of the request. Days are counted from the day after the date stamp from anywhere within the MDCR.
 - Denials and partial denials must include reasons for denial, and descriptions of any information not provided. For instances, the FOIA Coordinator may deny all or a portion of a request for various reasons including: i) the requestor did not describe the records they requested well enough and the MDCR cannot determine what they are asking for; ii) the MDCR has determined that it does not have records that respond to the request in its possession; iii) the information or records requested are from a pending cases; iv) the information is of personal nature, where the public disclosure would constitute a clearly unwarranted invasion of an individual's privacy; v) the information or records are subject to the attorney-client privilege; or (vi) the communication 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.
 - Notices extending the period for response to the request must specify the reasons for the extension and the date by which the FOIA Coordinator will issue the second written notice. The FOIA Coordinator will also initiate remedial action.

- Provide copies of these procedures and guidelines and a summary of these procedures and guidelines or provide a link to an online version of these documents, with each written response.
- At the time of granting or partial granting of request, provide the requestor with a cost estimate of search, copying and mailing charges, with an invoice detailing specific charges, if known.
- Upon payment by requestor of a required good faith deposit, if required, 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 requestor. After the final invoice is paid, the records will be released to the requestor often within five business days.
- Upon receipt of payment (or notification of payment from the Budget and Management Services Division) for copies of records, conduct or supervise a detailed review of the file to remove duplicate documents and identify and redact any exempt records, obtain copies of the documents, and mail or otherwise provides them to the requestor.

All MDCR Employees (Other than the FOIA Coordinator) must:

- Immediately (**Same Day**) forward any FOIA requests received, preferably by email, to the FOIA coordinator at MDCR's FOIA mailbox (MDCR-FOIA @michigan.gov).
 - A request received by fax or email are deemed to be received on the business day following the date of transmission. If a request is sent by email and delivered to the employee's spam or junk mail folder, the request is not deemed to be received until one day after the employee first becomes aware of the request. For all other requests, receipt date is the day the request is received **anywhere within the department**.
- Open, read and assess all mail, including faxes and e-mails, on the day it is received. Careful reading is necessary since requests are often included within or at the end of letters discussing other matters. **Policy and Procedures 402.06 Handling of Incoming Mail**
- Stamp with date of receipt all FOIA requests not received by email before forwarding to the FOIA Coordinator. Note: The five-day response period begins on the day after receipt anywhere in the department.
- Work through the FOIA Coordinator in responding to requests to ensure that consistent and correct responses are provided to the public. If the employee receives a follow-up inquiry to a FOIA request, the employee should refer the inquiry to the FOIA Coordinator.
- Respond immediately to all requests for documents from the FOIA Coordinator to assure that the legislated deadlines are met.
- Maintain a master file containing the original of all documents received for the contact to avoid excessive duplication in the master file. Copies made to create report exhibits are acceptable.

MEDIA REQUESTS:

- Certain information requested by a media source falls under the FOIA guidelines and constitutes a formal request, even if not requested in writing. In such instances where a verbal request was made, the media source will be asked to submit a written request to the FOIA coordinator.
- The Director of Communications may answer certain media requests outside of the FOIA process if the request does not seek a public record. However, all requests from a media source seeking a public record must be immediately forwarded to the FOIA coordinator and processed as a FOIA request pursuant to the Act.
- The FOIA coordinator must forward a copy of all FOIA requests that are media-oriented or litigation-oriented to the Director of Communications. The FOIA coordinator must also send a copy of all FOIA responses (response letter and corresponding records) to media FOIA requests to the Director of Communications before the request is released.

DEADLINES:

- Unless otherwise agreed to in writing by the requestor, the MDCR will provide an initial response to a request for a public record within 5 business days. The initial response may: i) grant the request; ii) issue a written notice denying the request; iii) grant the request in part and deny the request in part; or iv) issue a notice extending for not more than 10 business days the period during which the MDCR shall provide a response. MCL 15.235(2). Failure to respond constitutes a denial and gives the requestor the right to go to court to obtain the documents.
- Due to the short statutory time period within which the MDCR must issue a written notice in response to the FOIA request, it is imperative that there be no delay in complying with the MDCR's procedures and guidelines.
- Internal delay will be addressed, and corrective measure taken as needed.

ASSESSMENT OF FEES:

- Consistent with FOIA, the MDCR may charge a fee to process FOIA requests. Fees will be itemized using a detailed itemization form and the total fee will not exceed the total of the following:
 - **Labor costs for the search, location, and examination of public records:** These costs will be calculated using the hourly wage of the MDCR's lowest paid employee capable of conducting the search, location, and examination, whether they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the MDCR's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - **Labor costs for the review of public records and separation and deletion of exempt from nonexempt material:** These costs will be calculated using the hourly wage of the MDCR's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, whether they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the MDCR's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly

wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.

- **Nonpaper physical media costs:** These costs will be calculated using the actual and most reasonably economical cost of computer discs, computer tapes, and other digital and similar media provided by the MDCR.
- **Duplication and publication costs:** These costs will be calculated using the actual total incremental cost of necessary duplication or publication of a public record, not including labor. The actual and incremental cost, calculated per sheet, shall be charged and will not exceed 10 cents per sheet of paper for letter or legal-size paper. The MDCR shall use the most economical means available for making copies, including the use of double-sided printing, if cost saving and available.
- **Labor costs for the duplication or publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on nonpaper physical media or through electronic means:** These costs will be calculated using the hourly wage of the MDCR's lowest paid employee capable of duplicating or publishing the public records, whether they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the MDCR's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
- **Actual costs of mailing:** These costs will be calculated using a reasonably economical and justifiable manner.
- **Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the Department's lowest paid employee capable of monitoring the inspection.** Labor costs for monitoring an inspection will not be charged for the first hour. The hourly wage will be based on the MDCR's payroll records for the applicable fiscal year. Note: Section 3(3) of the FOIA, MCL 15.233(3), provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."
- No employee shall stipulate to work overtime or include overtime wages in the labor costs described in these procedures and guidelines.
- Fees will be uniform and not dependent upon the identity of the requesting person.
- Other than \$20.00 for cases of indigency, no employee shall waive a fee or any part of a fee without authorization from the MDCR the Executive Director or their designee.
- For voluminous documents with cost estimates above \$50, the MDCR may request a 50% non-refundable deposit before proceeding with detailed review. MCL 15.234 (2).
- Costs shall be determined on an annual basis after review of copy and mailing costs, salary level of lowest paid person able to process the requests, and any other specifically determined relevant factors in accordance with MCL 15.234. A standard may be established waiving fees below a set amount on an annual basis.

INDIGENCY FEE WAIVERS:

- The MDCR may waive, up to \$20 of charges in accordance with MCL 15.234 (1) if the requestor is indigent. An indigent waiver form is available upon request or accessible online.
- An individual requesting a waiver must submit an affidavit stating they are indigent and receiving public assistance, or if not receiving public assistance, stating facts showing an inability to pay the cost due to indigence.

- An individual is not eligible for a waiver if (1) the individual has previously received discounted copies of public records under MCL 15.234 from the MDCR twice during the same calendar year or (2) the individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request.
- If a requestor's affidavit of indigency is approved, the first \$20.00 of a fee will be waived.

DEPOSIT REQUIREMENTS:

- If the MDCR's estimated processing fee is greater than \$50.00, a non-refundable good-faith deposit will be required before your request can be processed. The deposit will equal one half of the total estimated fee. The written notice requiring a deposit will include an itemized estimate showing how the total fee was determined and a best effort estimate by the MDCR of how long after a deposit is received it will take the department to provide the public records. The time frame estimate is not binding upon the MDCR, but the MDCR shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this State's public policy under section 1 of the FOIA, MCL 15.231, and the nature of the request in the particular instance.
- A good faith deposit, if required, must be paid within **45 days**, or the request is considered abandoned.

INSPECTION:

- The FOIA also requires that at the request of an individual, a reasonable opportunity for inspection of nonexempt public documents shall be allowed during normal business hours. The FOIA coordinator or assistant FOIA coordinator must remove exempt material before the inspection. There is no charge for inspection of documents, although a fee will be charged if it is necessary to make a copy of a document to redact a portion that is exempt. There may also be a charge to supervise the inspection of the records.

APPEALS OF FEES AND DISCLOSURE DETERMINATIONS:

- If the MDCR makes a final determination to deny all or a portion of a request, the requestor may do one of the following, MCL 15.240(1):
 - Submit to the MDCR Executive Director, or their designee, a written appeal that specifically states the word "appeal" and identifies the basis for which the fee should be reduced, or the disclosure determination should be reversed.
 - Commence a civil action in the circuit court, or if the decision of the MDCR is at issue, the court of claims, to compel the MDCR's disclosure of the public records within 180 days after its final determination to deny a request.
 - **Note:** Actions involving fee reductions must be filed within 45 days after receiving the notice of a required fee or the determination of an appeal to the MDCR Executive Director or their designee.
- Within 10 business days after receiving a written appeal, the MDCR Executive Director or their designee, shall pursuant to MCL 15.240(2):
 - Reverse the denial;
 - Issue a written notice to the requestor upholding the denial;
 - Reverse the denial in part and issue a written notice to the requestor upholding the denial in part; or

- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the MDCR Executive Director or their designee, shall respond to the written appeal.
 - No more than **one** notice of extension may be issued for a particular written appeal.
- FOIA appeals must be in writing and sent to the MDCR FOIA Appeals Officer by email or US mail to:
Email: MDCR-FOIAappeals@michigan.gov

US Mail: Michigan Department of Civil Rights
Attn: FOIA Appeals Officer
3054 W. Grand Boulevard, Suite 3-600
Detroit, MI 48202

APPEALS OFFICER:

The MDCR's Appeals Officer shall:

- Receive all FOIA appeals from department director or the department director's designee.
- Assign number and enters FOIA appeal into database.
- Investigate initial response and prepare a response to the appeal.
- Draft response to the appeal is forwarded to the department director or the department director's designee.

TRANSPARENCY LIAISON:

- In accordance with Executive Directive 2019-11 ("ED 2019-11"), the MDCR has appointed a Transparency Liaison. The MDCR's Transparency Liaison shall:
 - Assist members of the public seeking a public record from the MDCR in navigating the requirements of the FOIA or other law applicable to public records, including by providing educational materials on the MDCR's website.
 - 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.
 - Make recommendations to the MDCR for compliance with ED 2019-11, to reduce costs relating to public records requests, and to encourage greater transparency.
 - Advocate for the disclosure of public records quickly and in a cost-efficient manner.
 - Advocate for transparency and procedures that encourage public participation in public meetings.
 - Consult with the MDCR's FOIA Coordinator regarding compliance with ED 2019-11 and FOIA.
 - Recommend changes to the MDCR's procedures and guidelines and written public summary of the procedures and guidelines for the department under section 4 of the Act, MCL 15.234.
- The MDCR's Transparency Liaison may be contacted at satchell1@michigan.gov or at the e-mail address listed for the current Transparency Liaison on the MDCR website.