

**CITY OF MARQUETTE, MICHIGAN
CITY COMMISSION POLICY**

Policy Number: 2015-01	Revision Date(s): 03-30-26
Date Adopted: 04-27-15	
Department: Administrative	

SUBJECT: CITY OF MARQUETTE FOIA PROCEDURES AND GUIDELINES

PURPOSE: This policy is intended to provide clear direction to City staff and the public as regards City of Marquette compliance with the State of Michigan Freedom of Information Act.

POLICY:

Preamble: Statement of Principles

The City of Marquette’s policy with respect to Freedom of Information Act (FOIA) requests is to comply with State law in all respects and to respond to FOIA requests in a consistent and fair manner.

With this goal in mind, the City Commission establishes the following policy. This policy is intended to be paired with a written public summary, which will be made available in the City Clerk’s office and on the City’s website.

This document constitutes the City of Marquette’s written procedures and guidelines for responding to requests for public records under the Michigan Freedom of Information Act, as required by MCL 15.234, and is adopted pursuant to that authority.

Section 1: General

The City Commission, in compliance with MCL 15.236, designates the City Clerk as the FOIA Coordinator for all general record requests. He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City’s public records and to approve denials.

Additionally, the City Commission, in compliance with MCL 15.236, designates the City Police Chief as the FOIA Coordinator for all requests that pertain solely to documents retained or generated by the City Police Department. He or she is authorized to designate other City Police Department staff to act on his or her behalf to accept and process written requests for the City’s public records.

The City Clerk will oversee the response to all records requests, with the exception of those requests that pertain solely to documents retained or generated by the City Police Department – such as arrest records, incident reports, or investigation files. Such requests will be overseen by the Police Chief.

If a request for a public record is received by email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a City spam or junk mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. City staff shall review relevant spam and junk mail folders on a regular basis.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and this policy to administer the acceptance and processing of FOIA requests.

FOIA requests are requests for existing records. The City is not obligated to create a new public record, including compiling, summarizing, or analyzing information in response to a request. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

This policy and a written public summary will be maintained on the City's website, and when the City responds to a FOIA request, a link to those documents will be provided in lieu of providing paper copies.

Section 2: Requesting a Public Record

No specific form to submit a request for a public record is required. However, the FOIA Coordinator shall make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City may be submitted on the City's FOIA Request Form, or in writing through other means. Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by email. Upon City staff's receipt, requests for public records shall be promptly forwarded to the appropriate FOIA Coordinator for processing.

A request must include the requesting person's complete name, address, and contact information, and if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An 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.

A request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

A person may request that public records be provided in a non-paper physical media format, by email, or in another digital format in lieu of paper copies. The City will provide records in the format requested only if the City has the technological capability to provide the records in the requested format.

A person may subscribe to future issuances of public records that are created, issued or disseminated by the City on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the City will issue a response within five (5) business days of receipt of a FOIA request.

The City will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying the request in part.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

When determining all time calculations, requests received by email or other electronic transmission are deemed to have been received on the next business day following receipt.

A response will include a link to the location on the City's website where a copy of this policy will be made available, in addition to the written public summary.

When a request is granted

If the request is granted, or granted in part, the FOIA Coordinator shall provide a detailed itemization of any allowable costs incurred to process the request. Any payment owed must be made in full before the public record is made available. The requestor shall be notified of any amount due and how the records may be obtained once payment is made and processing is complete.

If the total allowable cost incurred to process a request is less than \$100.00, the City shall complete processing of the request without advance notice to the requestor, unless a requestor has asked to be notified in advance of potential charges.

If the FOIA Coordinator determines, based on a good-faith calculation, that the estimated cost to process a request will exceed \$100.00, or if the requestor has not paid in full for a previously granted request, the City may require a deposit in accordance with Section 4 of this Policy before continuing to process the request.

When requesting a deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred in processing the request, as well as an estimate of the

time required to provide the public records. These estimates are nonbinding, but shall be made in good faith and in an effort to be reasonably accurate, based on the nature and scope of the request.

When a request is denied or denied in part

If the request is denied or denied in part, the FOIA Coordinator shall issue a Notice of Denial. The Notice of Denial shall include, as applicable:

- An explanation of the basis for denial, including a citation to the applicable exemption under the Michigan Freedom of Information Act;
- A certification that the requested public record does not exist under the name or description provided by the requestor, or under another name reasonably known to the City; and/or
- A description of the public record or information within a public record that has been separated or deleted from the public record.

The Notice of Denial shall also include:

- Notice of the requestor's right to appeal the denial to the City Commission or to seek judicial review in the Marquette County Circuit Court;
- Notice of the requestor's right to seek attorneys' fees, costs, disbursements, and damages as provided under the Michigan Freedom of Information Act if the requestor prevails; and
- The signature of the FOIA Coordinator or designee.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial, seek clarification or amendment of the request. Any clarification or amendment shall be considered a new request for purposes of response timelines under this Policy.

Requests to inspect public records

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours.

In certain circumstances, the inspection of public records may require the presence of City staff to ensure compliance with applicable laws, to maintain custody of records, or to protect records from loss, alteration, mutilation, or destruction. When staff presence is required for these purposes, the City may charge allowable labor costs associated with such presence.

Requests for certified copies

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

If the fee to provide requested records is estimated to exceed \$100.00, the requestor may be asked to provide a deposit not exceeding one-half of the total estimated fee prior to commencing with the request.

When requesting a deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred in processing the request, as well as an estimate of the

time required to provide the public records. These estimates are nonbinding, but shall be made in good faith and in an effort to be reasonably accurate, based on the nature and scope of the request.

If a request for public records is submitted by a person who previously failed to pay the City in full for copies of public records that were made available for release contingent upon a fee payment, the FOIA Coordinator may require a deposit equal to 100% of the good-faith estimate detailed in Section 3 of this policy. This provision holds true only if all of the following conditions are met:

- The final fee for the prior written request was not more than 105% of the estimated fee;
- The public records made available contained the information being sought in the prior written request and are still in the City's possession;
- The public records were made available, subject to payment, within the time frame estimated by the City to provide the records;
- At least ninety (90) days have elapsed since the FOIA Coordinator notified the requestor in writing that the public records were available upon payment;
- The requestor is unable to demonstrate proof of prior payment in full; and
- The FOIA Coordinator has prepared a detailed itemization of the estimated allowable costs for the subsequent written request.

The FOIA Coordinator shall not require a 100% deposit under this section if the requestor provides proof of prior payment in full to the City, if the City is subsequently paid in full for the prior written request, or if 365 days have elapsed since the requestor submitted the prior written request for which full payment was not remitted.

Section 5: Calculation of Fees

The City may charge a fee for the allowable costs incurred in processing a request for public records, as permitted under the Michigan Freedom of Information Act.

The City may charge labor costs for copying or duplication of public records. Labor costs for searching for, locating, examining, reviewing, and separating exempt from nonexempt information shall not be charged unless failure to do so would result in unreasonably high costs to the City due to the nature of the request, as determined on a case-by-case basis and specifically identified by the FOIA Coordinator.

Allowable costs under the Michigan FOIA include:

- Labor costs associated with copying or duplication of public records, including paper copies, digital copies, or transferring records to non-paper physical media or through electronic transmission;
- Labor costs associated with searching for, locating, examining, reviewing, and separating exempt from nonexempt information, when failure to charge such costs will result in unreasonably high costs to the City;
- The cost of paper copies of public records, not including labor;
- The cost of non-paper physical media when requested by the requestor; and
- The actual cost of mailing or sending public records.

Labor costs shall be calculated in accordance with the following:

- All labor costs will be estimated and charged in 15-minute increments, with partial increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Fringe benefits shall be included in labor costs, not to exceed 50% of the applicable labor charge, and not to exceed actual fringe benefit costs.
- Overtime work will not be performed, and overtime labor costs will not be charged, unless the requestor has agreed in advance to the use of overtime. Any decision to utilize overtime remains at the discretion of the FOIA Coordinator.
- Contracted labor costs shall be charged at the actual cost incurred by the City, but shall not exceed six times the state minimum hourly wage.
- Paper copies of public records made on standard letter- or legal-sized paper shall not exceed \$0.10 per sheet. Double-sided copying shall be used when cost-saving and available.

Non-paper physical media shall be provided at the actual and most reasonably economical cost, and only if the City has the technological capability to provide the records in the requested format. The City will not accept non-paper media supplied by the requestor.

Mailing costs shall be limited to the actual cost of reasonably economical delivery, including the least expensive form of postal delivery confirmation if applicable. Expedited shipping or insurance shall not be charged unless specifically requested.

If the City fails to timely respond to a written request as required under the Freedom of Information Act, any applicable labor costs shall be reduced by 5% for each day the City exceeds the permitted response period, up to a maximum reduction of 50%, and the reduction shall be clearly noted in the detailed itemization of costs.

Section 6: Fee Waivers and Discounts

General

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator, the cost is negligible or a waiver or reduced fee is in the public interest because it can be considered as primarily benefiting the general public.

Indigence

The City shall discount the first \$20.00 of the processing fee for a request for public records if the requestor submits an affidavit stating that the requestor is indigent and either:

- Is receiving specific public assistance; or
- Is not receiving public assistance but states facts demonstrating an inability to pay because of indigence.

The discount shall not be applied if:

- The requestor has previously received discounted copies of public records from the City two times during the same calendar year; or
- The requestor is requesting information in connection with another person who is offering or providing payment to make the request.

The FOIA Coordinator may make an affidavit form available for use by requestors.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The City shall discount the first \$20.00 of the processing fee for a request submitted by a nonprofit organization that is formally designated by the State of Michigan to carry out activities under:

- Subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402; or
- The Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors.

The discount shall apply only if the request:

- Is made directly on behalf of the organization or its clients;
- Is made for a purpose consistent with the mission and provisions of those laws and section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and
- Is accompanied by documentation of the organization’s state designation, if requested by the City.

Section 7: Appeal of a Denial of a Public Record

If a requestor believes that all or a portion of a public record has been improperly withheld or exempted from disclosure, he or she may appeal the denial by submitting a written appeal to the City Commission through the office of the FOIA Coordinator.

An appeal must be in writing, must specifically state the word “appeal,” and must identify the reason or reasons the requestor is seeking a reversal of the denial. The City may make a FOIA appeal form available for use by requestors.

A written appeal of a denial is considered received by the City Commission on the date of the first regularly scheduled City Commission meeting following submission of the appeal.

At the next regularly scheduled City Commission meeting after receiving a written appeal, the City Commission shall render a judgment on the appeal, directing the FOIA Coordinator to respond in writing by either:

- Reversing the disclosure denial;
- Upholding the disclosure denial;
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, issuing a notice extending for not more than 10 business days the period during which the City Commission shall respond to the written appeal. Only one such notice of extension may be issued for a particular written appeal.

If the City Commission fails to respond to a written appeal, or if the City Commission upholds all or a portion of the denial, the requestor may seek judicial review of the nondisclosure by commencing a civil action in the Marquette County Circuit Court.

Whether or not a requestor submits an appeal to the City Commission, he or she may file a civil action in Marquette County Circuit Court, as provided under the Michigan FOIA.

Section 8: Appeal of a FOIA Processing Fee

For purposes of this section, “fee” means the total fee or any component of the total fee calculated under the Michigan Freedom of Information Act, including any deposit.

If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she may appeal for a fee reduction by submitting a written appeal to the City Commission through the office of the FOIA Coordinator.

An appeal must be in writing, must include the word “appeal,” and must identify the manner in which the required fee exceeds the amount permitted. The City may make a FOIA fee appeal form available for use by requestors.

A written appeal of an excessive fee is considered received by the City Commission on the date of the first regularly scheduled City Commission meeting following submission of the appeal.

Within 10 business days of receiving a written fee appeal, the City Commission shall render a judgment on the appeal, directing the FOIA Coordinator to respond in writing by either:

- Waiving the fee;
- Reducing the fee and issuing a determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a determination indicating the specific basis that supports the required fee; or
- Extending the time to respond for not more than 10 additional business days and detailing the reason or reasons the extension is necessary. Only one such extension may be issued for a particular appeal.

If the City Commission reduces or upholds the fee, the written determination shall include a certification that the statements in the determination are accurate and that the fee complies with this policy and with the Michigan Freedom of Information Act.

If the City Commission fails to respond to a written appeal as required, or if the requestor disagrees with the City Commission’s determination, the requestor may seek judicial review of the fee by commencing a civil action in the Marquette County Circuit Court as provided under state law.

If a civil action is commenced regarding an excessive fee, the City is not required to complete processing of the request for the public record at issue until the court resolves the fee dispute.

Section 9: Conflict with Prior FOIA Policies and Procedures

To the extent that this policy conflicts with any prior FOIA policies or procedures adopted by the City Commission or the City of Marquette, this policy shall control.

To the extent that any provision of this policy, or any administrative procedure adopted by the FOIA Coordinator, is found to conflict with applicable state law, the state law shall control.

The FOIA Coordinator is authorized to adopt reasonable administrative rules and procedures, consistent with this policy and applicable state law, to facilitate the receipt, review, and processing of requests for public records under the Michigan Freedom of Information Act. Any administrative rules and procedures adopted by the FOIA Coordinator shall not amend or supersede this policy.