



# Memorandum

To: John Szerlag, City Manager  
From: John M Lamerato, Assistant City Manager/Finance and Administration  
Tonni L. Bartholomew, City Clerk  
Date: April 14, 2005  
Subject: Agenda Item: FOIA (Freedom of Information Act) / Enhanced Access Policy  
Proposed Revision

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In response to the increase in labor and material costs, the City Clerk's Office has reviewed and updated the attached City of Troy FOIA (Freedom of Information Act) policy. Copies of a document request form and City of Troy Response form have been included as part of the documentation. While it is not required by Statute that documents be requested on the attached form, the form does assist City staff in identifying and narrowing down searches to the exact document/s requested. Additionally, all written requests for documents identified with the acronym of FOIA or with the words Freedom of Information are processed according to the FOIA policy guidelines and time requirements.

A recommended resolution has been incorporated into and is made part of the policy.

cc: Lori Bluhm, City Attorney



## FOIA/ ENHANCED ACCESS POLICY

500 West Big Beaver  
Troy, Michigan 48084  
(248) 524-3317

### RESOLUTION

Moved by:

Seconded by:

WHEREAS, The City of Troy is a public body within the meaning of the Michigan Freedom of Information Act (MFOIA, found in MCL 15.231 et seq.) and the Michigan Enhanced Access Act (MCL 15.441 et seq.);

WHEREAS, The declared public policy of the State of Michigan, as set forth in the MFOIA, is that all persons, except those incarcerated in state or local correctional facilities, are entitled to full and complete information regarding governmental decision-making;

WHEREAS, In its capacity as a public body, the City of Troy creates, possesses and maintains certain records which fit within the definition of the term "public records" as defined in the MFOIA;

WHEREAS, The City of Troy is required by the provisions of the MFOIA to grant requests by persons or corporations desiring to inspect or receive copies of public records when the requested documentation or information is described sufficiently to enable the public body to find the public record, except as provided in MCL 15.243;

WHEREAS, The City of Troy has the ability to provide some "public records" in a requested electronic format, but the cost of producing the requested public records exceeds normal MFOIA production costs and therefore is entitled to be reimbursed to the City; and

WHEREAS, The City of Troy desires to establish procedures, guidelines and fees in accordance with and pursuant to the provisions of MFOIA and the Michigan Enhanced Access Act for application to and for use in connection with requests received by it for the inspection or receipt of copies of public records.

NOW, THEREFORE, BE IT RESOLVED, That the City Clerk is hereby DESIGNATED as the FOIA/ Enhanced Access Act Coordinator for the City of Troy.

BE IT FURTHER RESOLVED, That the attached FOIA/Enhanced Access policy is hereby ADOPTED by the City of Troy.

Yes:

No:

**PROCEDURES AND GUIDELINES REGARDING FREEDOM OF INFORMATION ACT  
AND ENHANCED ACCESS TO PUBLIC RECORD REQUESTS** 1

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## **PROCEDURES AND GUIDELINES REGARDING FREEDOM OF INFORMATION ACT AND ENHANCED ACCESS TO PUBLIC RECORD REQUESTS**

A person has the right to submit a written request for public record(s) from the City and its departments. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

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### **A. DESIGNATED FOIA COORDINATOR**

The City Clerk is the designated FOIA Coordinator, who will accept and disseminate all non-police written information requests, as outlined in this policy and the MFOIA. The City Clerk shall also accept all subpoenas for records and process the subpoenas in the same manner. The Clerk will immediately forward the written request to the appropriate City Department, in addition to forwarding a copy of the information request to the City Attorney.

The following officers shall be authorized to act as FOIA Coordinator designees: the Deputy City Clerk, the City Attorney, the Assistant City Attorneys, the Police Services Section Lieutenant, the Police Administrative Section Sergeant and the Police Records Supervisor. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records and approve denials in accordance with the MFOIA. The FOIA Coordinator shall also be responsible for keeping a copy of all written requests for one year and one day after the request is made. The FOIA Coordinator shall also be responsible for sending written notices of the ten (10) day extension of response time when a request cannot be completed within the allocated five (5) business days (six (6) days if the request is received by electronic mail or facsimile) statutory time period.

All non-police department requests, after being processed, shall be immediately submitted to the City Attorney's Office. If requested, the City Attorney and his/her designee shall make a final determination regarding release of the requested information shall be made. When information is requested from the Police Department, and upon request, the City Attorney's and or his/her designee shall make the final determination regarding release of the requested Police Department information.

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### **B. REQUESTER RESPONSIBILITIES UNDER FOIA/ ENHANCED ACCESS**

1. The requester of records must submit a written request for public record(s) from the City and its departments. All non-police department requests must be submitted to the FOIA Coordinator. All police department requests must be submitted to the Police Records Supervisor.
  2. The written request must sufficiently describe the public record to enable the FOIA Coordinator or designee to identify the requested public record. The FOIA Coordinator or designee may send a notice requesting clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request.
  3. Updates and revisions to the requested information will not be automatically supplied by the City of Troy. A new written request must be made each time supplemental information is requested.
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## C. CITY RESPONSIBILITIES UNDER FOIA/ENHANCED ACCESS

1. The FOIA Coordinator or designees shall respond to all written requests within five business days, unless a notice of extension has been sent.
  2. If the request indicates that the requester desires to inspect public record(s), the FOIA Coordinator will contact the requester to arrange for inspection of non-exempt public record(s) at a reasonable time. The inspection and examination of public record(s) shall be conducted by the requesting person in the presence of an employee of the City of Troy and under conditions as the FOIA Coordinator, or his or her designee, might require in order to protect the City of Troy's public records and prevent excessive and unreasonable interference with the discharge of municipal functions.
  3. If the request indicates that the requester wishes to have copies of public record(s) prepared and/or mailed, the FOIA Coordinator shall be responsible for providing copies of non-exempt public record(s), subject to the payment of costs, as outlined below.
  4. If requested in writing, the custodian of a public record shall provide a certified copy of a public record.
  5. If the written request is denied, the FOIA Coordinator or designee shall issue a written notice denying the request. The notice shall include an explanation as to why the requested public record(s) are exempt from disclosure or an indication that the requested public record does not exist. If a request is made for an existing public record that includes information that is exempt from disclosure under the MFOIA, and information that is not exempt, the FOIA Coordinator or designees must separate the material and make the non-exempt material available for examination and/or copying. Additionally, the FOIA Coordinator or designees shall generally describe the material that had to be separated, unless doing so would reveal the contents of the exempt information and thus, defeat the purpose of the exemption. The labor costs incurred in such procedure shall be treated in accordance with the cost provision, as set forth below.
  6. The City of Troy may provide enhanced access for the inspection, copying, or purchasing of select public record(s) that are not confidential or otherwise exempt by law from disclosure. Enhanced access is defined as a public record's immediate availability for public inspection, purchase or copying by digital means. Enhanced access does not include the transfer of ownership of a public record, and the City of Troy has a duty to ensure ownership of information products and City created intellectual property is protected and maintained. In addition, a written disclaimer should explicitly state that the City of Troy, in providing enhanced access, make no warranties of any kind, including, but not limited to warranties of accuracy, fitness for a particular purpose, or of a recipient's right of use, and states that all enhanced access is received "AS IS". Recipients of enhanced access are solely responsible for investigating, resisting, litigating and settling such complaints, including the payment of any damages or costs.
  7. Neither the City of Troy nor the FOIA Coordinator are obligated to create a record, list, compilation or summary of information which does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. In addition, the MFOIA does not impose greater retention of public record responsibilities than what is required under other provisions of the law and/or City Charter.
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8. The City of Troy will utilize its best efforts to respond to all requests made pursuant to the MFOIA. However, the City will search only the most likely locations for responsive public record(s). The City of Troy is not required under MFOIA to search each and every record it maintains in order to discover material that might pertain to a specific request.

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#### **D. COSTS FOR RESPONDING TO FOIA REQUESTS**

Pursuant to the Michigan Freedom of Information Act [MCL 15.243(3)], the City of Troy is entitled to establish a policy seeking reimbursement to the City for the costs incurred in honoring Freedom of Information Act requests when the FOIA results in an unusually high cost to the public body. Due to the large number of FOIA requests the City of Troy receives, the implementation of a cost recovery policy is therefore necessary. The following costs incurred in responding to a FOIA request shall be chargeable to each FOIA requester:

1. Photocopying charges of 32 cents per page, or if the nature of the duplication necessitates duplication by outside sources, the actual cost of employing such outside sources.
  2. Labor costs at the hourly wage of the lowest paid employee of the City of Troy capable of retrieving the information necessary to comply with a request incurred in duplication, mailing, search, examination, review and the deletion and separation of exempt and non-exempt information. The City of Troy shall specifically identify the nature of the costs.
  3. Actual mailing costs.
  4. Actual duplication costs for photographs, videotapes, tape cassettes, maps, plans, or microforms and any other type of medium requested.
  6. If a person signs an Affidavit of Indigency, the first \$20.00 of the charge is waived. However, the requester is responsible for any costs that exceed \$20.00. The requester is also responsible for paying for duplicate copies of requested information that has previously been provided to the requester.
  7. If the total estimated cost of a request exceeds \$50.00, a deposit equal to one-half of the total estimated cost may be requested prior to completing the request.
  8. A requester has two weeks to pay for a FOIA request. Un-claimed FOIA requests will be destroyed if left un-claimed for a period of thirty (30) days. Copies shall be made of the check or money order and receipt, which shall be attached to the original FOIA request.
  9. The FOIA Coordinator may waive some or all of the costs of responding to a FOIA request if furnishing copies of the requested document(s) is considered as primarily benefiting the general public.
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## **E. COSTS FOR RESPONDING TO ENHANCED ACCESS REQUESTS**

Pursuant to the Michigan Enhanced Access To Public Records Act (MCL 15.232 et seq.), the City of Troy is entitled to establish a policy seeking reimbursement to the City for the costs incurred in responding to enhanced access requests, especially since these requests could result in an unusually high cost to the public body. Therefore, the City of Troy will charge a reasonable fee to recover only the cost of providing the enhanced access information. The reasonable fee shall include, but not be limited to, the direct cost of creating, compiling, storing, maintaining, processing, upgrading, or enhancing information or data in a form available for enhanced access, including the pro-rated cost of computer hardware and software, system development, employee time, and any other actual costs incurred in supplying the information or record in the form requested by the purchaser. When calculating employee time, the actual wage (plus benefits) of the lowest paid employee capable of performing the responsibilities shall be utilized.

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## **F. APPEALS**

In accordance with the MFOIA, where a person's request for a public record is denied, in whole or in part, the person shall be entitled to file a written appeal of the decision in accordance with the following process:

1. The requester shall be advised in writing of the right and the procedure for filing a written appeal to the City Manager.
  2. The FOIA Coordinator shall immediately, upon receipt, refer all written FOIA appeals to the City Manager. The City Manager shall then review any materials submitted by the appellant, any written comments received from the FOIA Coordinator or designees, and any other information that the City Manager deems necessary.
  3. The City Manager has ten days, absent compelling reasons for an extension of time, to take any of the following actions in response to the filing of an appeal of a FOIA request denial:
    - A. Reverse the disclosure denial.
    - B. Issue a written notice to the requester affirming the disclosure denial.
    - C. Reverse the disclosure denial in part and issue a written notice to the requester affirming the denial in part.
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Dear \_\_\_\_\_ Date \_\_\_\_\_

Response to your inquiry of \_\_\_\_\_ requesting \_\_\_\_\_

We have taken action as indicated below. Please note that if your request for information has been denied, we have indicated the appropriate provisions under State Law P.A. 442(1976), which defines such information as exempt.

- 1  Requested material attached.
- 2  Extension of 10 days
- 3  Copying costs are estimated to be: \_\_\_\_\_
- Bill enclosed.
- You will be billed.
- A Good Faith deposit is required at this time. Make check payable to: City of Troy
- 4  The Public Record does not exist as named. We request a conference to clarify the description of the public Record in question as the initial inquiry is insufficient to enable us to identify the record. You may call the City Clerk's Office at (248) 524-3316.
- 5A  Part of the requested material is attached. Material denied is due to exemptions as Public Record as defined by State Law.
- 5B  The requested material is denied in full due to exemption as Public Record as defined by State Law.

A description of the denied record is attached. Those exemptions in State Law which are applicable to the City of Troy are listed below as enumerated under Section 13, Paragraph 1 of the Act. Check indicates exemption invoked in denial of material. See back of form for specific provisions.

<input type="checkbox"/>	A	<input type="checkbox"/>	D	<input type="checkbox"/>	F	<input type="checkbox"/>	G	SEE REVERSE SIDE FOR A FULL EXPLANATION OF YOUR RIGHT TO SEEK JUDICIAL REVIEW.
<input type="checkbox"/>	H	<input type="checkbox"/>	J	<input type="checkbox"/>	N	<input type="checkbox"/>	other	

Sincerely,

City of Troy Representative

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EXEMPTIONS UNDER P.A. 442, SECTION 13, PARAGRAPH 1, AS INDICATED IN ITEM 5 ON THE FRONT OF FORM INCLUDE:

- A. Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of the individual's privacy.
- D. Records or information specifically described and exempted from disclosure by Statute.
- E. A public record or information described in this Section which is furnished by the public body originally compiling, preparing or receiving the record or information to a public officer of public body in connections with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remains applicable.
- F. Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
  - i. The information is submitted upon a promise of confidentiality by the public body.
  - ii. The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
  - iii. A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.
- G. Information or records subject to the Attorney Client Privilege.
- I. A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for receipt of bids or proposals has expired.
- M. Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.

Other \_\_\_\_\_

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## RIGHT TO APPEAL AND JUDICIAL REVIEW

ACT 442, P.A. 1976, SECTION 10 ESTABLISHES THE REQUESTING PERSON'S RIGHT TO JUDICIAL REVIEW IN THE EVENT THAT PUBLIC BODY MAKES A FINAL DETERMINATION TO DENY ALL OR A PORTION OF A REQUEST. THE REQUESTING PERSON MAY COMMENCE AN ACTION IN THE CIRCUIT COURT TO COMPEL DISCLOSURE OF THE PUBLIC RECORDS. AN ACTION UNDER THIS SECTION ARISING FROM THE DENIAL OF AN ORAL REQUEST MAY NOT BE COMMENCED UNLESS THE REQUESTING PERSON CONFIRMS THE ORAL REQUEST IN WRITING NOT LESS THAN 5 DAYS BEFORE THE COMMENCEMENT OF THE ACTION. IF A PERSON ASSERTING THE RIGHT TO INFORMATION UNDER THIS ACT PREVAILS IN ALL OR A PORTION OF THE COURT ACTION, THE COURT SHALL AWARD AN APPROPRIATE AMOUNT TOWARD REASONABLE ATTORNEY'S FEES, COSTS AND DISBURSEMENTS. IN ADDITION, THE COURT MAY AWARD PUNITIVE DAMAGES IN THE AMOUNT OF \$500.00 TO THE PERSON SEEKING ACCESS TO THE PUBLIC RECORDS. IN ADDITION TO THE RIGHTS DESCRIBED ABOVE, YOU MAY ALSO FILE A WRITTEN APPEAL OF A DETERMINATION TO DENY ALL OR A PORTION OF A REQUEST BY DIRECTING THE APPEAL TO THE CITY OF TROY CITY MANAGER. SUCH AN APPEAL MUST SPECIFICALLY STATE THE WORD "APPEAL" AND IDENTIFY THE REASON OR REASONS FOR REVERSAL OF THE DISCLOSURE DENIAL.

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## STATEMENT OF COSTS REGARDING FOIA REQUEST

The City of Troy has incurred the following costs, which it is allowed to recover under the Michigan Freedom of Information Act ("FOIA"), in regard to the FOIA request that you submitted on \_\_\_\_\_.

1	Actual mailing costs	\$
2	Actual duplication or publication costs _____ pages @ \$.20 per page	\$
3	Actual labor costs incurred in duplication or publication _____ Minutes x \$.25 / Minute	\$
4	Actual labor costs incurred in searching, examining, reviewing, deleting or separating material _____ Min x \$_____ / Minute	\$
5	Miscellaneous:                      Records on CD @ \$5 per 1,000 records	\$
<b>TOTAL</b>		<b>\$</b>

Date:

**Signature (City of Troy Representative)**