

**THE DETROIT WATER AND SEWERAGE DEPARTMENT
MICHIGAN FREEDOM OF INFORMATION ACT
PROCEDURES AND GUIDELINES**

Section 1: PURPOSE

The City of Detroit Water and Sewerage Department [DWSD] is a public body as that term is defined in the Michigan Freedom of information Act, MCL 15.232, required by law to provide access to public records unless those records are exempt from disclosure by the Act, or some other statute.

This policy is intended to provide the procedures that the DWSD's FOIA Coordinator or his/her designees are to follow in accordance with the Michigan Freedom of Information Act (the "Act"), in order to ensure uniformity.

DWSD acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request that sufficiently describes the records sought by the requester. DWSD also acknowledges that sometimes it is necessary to invoke the exemptions identified under the FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

Section 2: DEFINITIONS

Act: The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.

FOIA Coordinator: The individual designated by the Director of the DWSD who is responsible for accepting and processing requests for DWSD public records, whether or not such requests expressly include the term "FOIA" or similar language, and all responses to those requests.

DWSD: The City of Detroit Water and Sewerage Department.

Public Body: "Public body" means a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in

the executive branch of state government, but does not include the Governor or Lieutenant Governor, or employees thereof. This includes DWSD and its constituted divisions, boards, and commissions.

Person: An individual, corporation, limited liability company, partnership, firm, Organization, association, governmental entity, or legal entity.

Public Record: A writing that is prepared, owned, used, in the possession of, or retained by a public body (DWSD) in the performance of an official function from the time it is created and as otherwise defined by the Act.

Writing: Handwriting, typewriting, printing, photo stating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drum, or other means of recording or retaining meaningful content.

Section 3: Requesting a Public Record

A person has the right to request, to inspect, or obtain copies of a public record, which is prepared, owned, used, possessed or retained by the DWSD. The request must give a sufficient description of the public record so as to enable DWSD personnel to identify and find the record.

A. Form of Requests :

1. No specific form is required, but requests must be in writing.
2. DWSD may, in its sole discretion provide a request form to assist individuals requesting information under the Act
3. Written requests may be submitted in person, by U.S. mail, facsimile, or email to:

FOIA Coordinator
Detroit Water and Sewerage Department
Water Board Building
735 Randolph Street
Detroit, MI 48226

4. A person may request that the requested record be provided on non-paper

physical media, electronically mailed or other, **ONLY**, if DWSD possesses the necessary technological capability to provide records in the requested form.

B. Grant of Requests

1. Upon Granting a request, DWSD shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during normal business hours. DWSD may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

2. DWSD may regulate the time and manner in which records are reviewed, to protect the records and to prevent excessive interference with the DWSD's normal operations. Additionally, it is the FOIA Coordinator's responsibility to protect the public record from loss, unauthorized alteration, mutilation, or destruction.

3. The Act does not require a public body to make a compilation, summary, or report of information, except as required in section 11. The Act does not require a public body to create a new public record.

4. g. 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.

5. DWSD may charge fees for the provision of copies of records requested under the Act. (See **Section 4 for Fees Associated With Granting of Requests**)

C. Denial of Requests

1. If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide:

- i. A an explanation as to why a requested public record is exempt from disclosure; or
- ii. A certificate that the requested record does not exist under the name or description provided by the requester, or another name reasonably known by the DWSD; or
- iii. An explanation or description of the public record or information within a public record that is separated or deleted from the public record ;and

- iv. An explanation of the person's right to submit an appeal of the denial to either the office of the Director of DWSD, or seek judicial review in the Wayne County Circuit Court; and
- e. An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.

2. If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the time lines described in Section 4(8).

Section 4: Deposits and Fees

A. Deposits

1. Generally

- a. If the cost of processing an FOIA request is \$50.00 or less, the requester will be notified of the amount due and where the documents can be obtained.
- b. If based on a good faith calculation that the cost of processing an FOIA is expected to exceed \$50.00, the requester will be asked to provide a deposit not exceeding one-half of the total estimated
- c. If the fee estimate is expected to exceed \$50.00 based on a good- faith calculation by the DWSD, the requester will be asked to provide a deposit not exceeding one-half of the total estimated fee.

B. Failure to Pay for Previously Requested Copies

If a request for public records is from a person who has not fully paid the DWSD for copies of public records made to fulfill a previously granted request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for any subsequent request by that person when all of the following conditions exist:

1. The final fee for the prior written request is not more than 105% of the estimated fee;
2. The public records were made available to the individual, subject to payment, within the time frame estimated by the DWSD to provide the public record;
3. The public record made available contained the information sought in the prior written request and remain in the DWSD's possession
4. 90 days have passed since the FOIA Coordinator notified the individual in writing that the public record was available for pickup or mailing;
5. The person is unable to show proof of prior payment to the DWSD; and the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

C. Conditions Where An Increased Fee Is Suspended

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

1. The person making the request is able to show proof of prior payment in full to the DWSD;
2. The DWSD is subsequently paid in full for the prior written request; or
3. 365 days have passed since the person made the request for which full payment was not remitted to the DWSD.

D. Detailed Itemization of All Costs Allowed

The requester will be provided with a detailed itemization of the allowable costs estimated to be incurred by the DWSD to process the request, and also provide a best efforts estimate of the time it will take to provide the records to the requester.

(NOTE): the DWSD's best efforts estimate shall not binding on DWSD, but will be made in good faith, considering the nature of the request, and its commitment to provide the records consistent with public policy expressed in Section 1 of the Michigan Freedom of Information Act.

Section 5: Calculation of Fees

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from non-exempt information unless failure to charge a fee would result in unreasonably high costs to the DWSD. The following factors shall be used to determine unreasonably high costs to the DWSD:

- A. The particular request incurs costs greater than incurred from the typical or usual request received by the DWSD.
- B. The volume of the public record requested.
- C. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record request.
- D. The extent to which the record must be obtained from more than one division of the DWSD.
- E. The staffing available to respond to the request.

Section 6: Costs Associated With Responding To FOIA Requests

A. Labor Costs

Labor costs will be calculated based on the following requirements:

1. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
2. Labor costs will be charged at the hourly wage of the lowest paid DWSD employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
3. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The DWSD may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.

4. Overtime wages will not be included in labor costs until agreed to by the requester; overtime costs will not be used to calculate the fringe benefit cost.

B. Non- Paper Physical Media

The cost to provide records on non- paper physical media when so requested will be based on the following:

1. Computer disks, computer tapes or other digital or similar non-paper media will be at the actual and most reasonably economical cost for that non- paper media.
2. This cost will only be assessed if the DWSD has the technological capability necessary to provide the public record in the requested non-paper media and will not accept non- paper media from the requester.

C. Paper Copies

1. Paper copies of public records made on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper will not exceed \$.10 per sheet of paper.
2. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
3. The DWSD may provide public records using double-sided printing, if cost-saving and available.

D. Mailing Costs

The cost of mailing will be based on the following:

1. The actual cost to mail public records using a reasonably economical and justified means.
2. The DWSD may charge for the least expensive form of postal delivery confirmation.
3. No cost will be made for expedited shipping or insurance unless requested.

E. Reduced Costs for Non Compliance With Act

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

1. Reduce the labor costs by 5% for each day the DWSD exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - a. The late response was willful and intentional.
 - b. The written request, within the first 250 words of the body of a letter, facsimile, e-mail, or e-mail attachment conveyed a request for information.
 - c. The written request included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or legal code reference to MCL 15.231 et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.

Section 7: Waiver of Fees

A. Public Benefit

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

This includes a nonprofit organization designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, if their request meets all of the following requirements:

1. The request is made directly on behalf of the organization or its clients;
2. The request is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931; and
3. The request is accompanied by documentation of its designation by the State, if requested by the public body

B. Indigence or Inability to Pay

The FOIA Coordinator WILL waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

1. Indigent and receiving public assistance; or
2. If not receiving public assistance stating facts demonstrating an inability to pay because of indigence.

C. Waiver Ineligibility

A person is not eligible to receive an FOIA processing fee waiver if:

1. The requester has previously received discounted copies of public records from the DWSD, two (2) times during the calendar year; or
2. The requester requests information in connection with other persons who are offering or providing payment to make the request.

A requester who is deemed ineligible will be informed of the specific reason for ineligibility in the DWSD response to the FOIA request.

Section 8: Appeal of a Denial of a Public Record

A. Form of Appeal

1. Appeal To The Public Body

When a requester believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the Interim Director ["the Director") of the. The appeal must be in writing, specifically state the word "appeal" and identify the reason(s) the requester is seeking reversal of the denial.

2. Public Body's Response to Appeals

Within ten (10) business days of receiving an appeal, the Interim Director of the DWSD will respond in writing by:

- a. Reversing the disclosure denial;
- b. Upholding the disclosure denial; or
- c. Reversing the disclosure denial in part and upholding the denial disclosure in part.

Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records, or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Director may issue not more than one (1) notice of extension for not more than ten (10) business days to respond to the appeal.

B. Appeal To Wayne County Circuit Court

A requester has right, irrespective of an appeal of a denial to the Director, he or she may file a civil action in the Wayne County Circuit Court within 180 days after the DWSD's final determination to deny the request. The following court determinations may apply:

1. If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements
2. If the court determines that the appellant prevails only in part the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.
3. If the court determines that the DWSD arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of a public record, it shall award the appellant punitive damages in the amount of \$1,000.00. The court shall also order that the public body pay a civil fine of \$1,000.00 to the general fund of the State treasury.

Section 9: Appeal of Excessive FOIA Processing Fees

A. Appeals to Public Body

1. Form of Appeal for Claim of Excessive Fees

If a requester believes that the fee charged by DWSD to process an FOIA request, exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the Director of the DWSD. The appeal must be in writing, and specifically state the word "appeal," and identify how the required fee exceeds the amount permitted.

2. Public Body's Response to Appeal for Claimed Excessive Fees

Within ten (10) business days after receiving an appeal claiming a charge of excessive fees, the Director will respond in writing by:

A, Waiving the fee;

B. Reducing the fee, and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Director that the statements in the determination are accurate, and the fee amount complies with its Procedures and Guidelines, and Section 4 of the Michigan Freedom of Information Act.

C. Upholding the fee, and issuing a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Director that the statements in the determination are accurate, and the fee amount complies with its Procedures and Guidelines, and Section 4 of the Michigan Freedom of Information Act; or

D. Issuing a notice detailing the reason(s) for extending for not more than ten (10) business days the period during which the Director, or his or her designee, will respond to the written appeal.

B. Appeals To The Wayne County Circuit Court

Within forty-five (45) days after receiving notice of the Director's determination of a fee appeal, a requester may commence a civil action in Wayne County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the DWSD is not obligated to process the request for the public record until the Court resolves the fee dispute.

If a requester files a civil action for a fee reduction, the following court

determinations may apply:

1. If the court determines that the fee charged by the DWSD exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant prevails by receiving a reduction of 50% or more of the total fee, the court may award all or an appropriate amount of reasonable attorneys' fees, costs and disbursements.

Section 10: Revision History, Conflict with Prior FOIA Policies and Procedures, and Effective Date

This DWSD policy was established pursuant to Resolution No. __, adopted by the Board of Water Commissioners [BOWC] on July 8 2015.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by DWSD, pertaining to the release of public records is found to be in conflict with any State statute, the FOIA statute shall control.

Additionally, to the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by DWSD's FOIA Coordinator, pertaining to the release of public records is found to be in conflict with any State statute, the FOIA statute shall control.

This policy may be amended from time-to time by the DWSD Chief Executive Officer when appropriate, in his or her discretion, to clarify or further the purposes of this policy and the Act.

Adopted: July 8, 2015

DETROIT WATER AND SEWERAGE DEPARTMENT
Freedom of Information Act Detailed Itemization of Fees

Date: _____

DWSD REFERENCE NO.: _____

Requester's name and address:	
Fee calculation	Amount
1. Labor costs* to search, locate, and examine: <u> </u> Hours x \$ (hourly wage) x <u> </u> % (multiplier for fringe benefits, not to exceed 50% or actual cost of fringe benefits)	\$
2. Labor costs* for review and separation of exempt from non-exempt material: <u> </u> Hours x \$ (hourly wage) x <u> </u> % (multiplier for fringe benefits, not to exceed 50% or actual cost of fringe benefits)	\$
3. Nonpaper physical media: Describe (e.g. CD's, DVD's, flash drive, etc.) and list actual costs.	\$
4. Duplication and publication: Describe (copying, scanning, etc.) \$ (cost per page) x number of pages	\$
5. Labor costs* to duplicate or publish: <u> </u> Hours x \$ (hourly wage) x <u> </u> % (multiplier for fringe benefits, not to exceed 50% or actual cost of fringe benefits)	\$
6. Mailing: Describe and list actual costs.	\$
Less waiver for indigent persons (\$20.00)**	
Less reduction for untimely response: \$ subtotal x 5% reduction per day x days	\$
Make check payable to Detroit Water and Sewerage Department and mail to: FOIA Coordinator, DWSD, Room 701, Water Board Building, Detroit, MI 48226	Total fee: \$
If the total fee is more than \$50.00, you will be asked to pay a deposit of one-half of the amount of the total fee. The total fee and deposit are estimates, and your final costs may vary from the estimates.	Deposit: \$
Part or all of the documents requested are available online at: If you prefer to have copies of these documents sent to you, please forward payment to the Department for processing.	\$
Balance to be paid:	\$

*Labor costs will be calculated using the lowest paid Department employee capable of each task. If more than one hourly rate is used, they will be listed on other copies of this form.

**You must submit an affidavit of indigence to qualify for this fee waiver.