



## CITY of NOVI CITY COUNCIL

Agenda Item O  
June 22, 2015

**SUBJECT:** Approval and adoption - Freedom of Information Act (FOIA) Procedures and Guidelines.

**SUBMITTING DEPARTMENT:** City Clerk *me*

**CITY MANAGER APPROVAL:** *[Signature]*

### BACKGROUND INFORMATION:

The Legislature recently overhauled several portions of Michigan's Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.* **The amendment requires extensive changes to the City's existing FOIA policy on the issues of fees, reimbursement, and the specific protocol of how to respond to a FOIA request.** All of the statutory changes will go into effect on July 1, 2015, and the City will not be able to charge for a FOIA response until it makes its adopted FOIA policy available to the public.

Here are some of the "highlights" of the amendment:

#### FOIA policy required

One of the most notable changes to the statute is the requirement that a municipality must affirmatively take steps to educate its citizens about FOIA. Specifically, the municipality must now make its FOIA policy readily available to the public, including posting the policy on its website (if it has one). Additionally, the FOIA policy must be written in a manner that clearly and concisely informs the public about:

1. How FOIA works;
2. The statute's appeal process and right to sue; and
3. The public body's fee structure and cost schedule.

The City must include a free copy of its FOIA policy and guidelines, including its fee schedule, with all of its responses to a FOIA request.

#### Labor costs, fees, and third-party fees

Under the new statute:

1. All labor costs must be charged in "increments of 15 minutes," with all partial time increments "rounded down."
2. The City's charge for the cost of "copying" — e.g., paper, toner, rental costs — must not exceed 10 cents per page.
3. The City must provide "non-paper" responses, such as computer discs, tapes, or other digital media in the "most reasonably economical cost" to the requesting party.

## Records on website

If the requested documents are available on the City's website at the time the request is made, the amendments prohibit the public body from charging for them. If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on the website, he or she must notify the requesting person in writing, including to the degree practical, reference to the specific webpage address.

If a verbal request for information is for information that the City believes is available on its website, the employee must, where practicable and to the best of the employee's knowledge, inform the requestor about the City's website address.

## Penalties

Under the revision, the City will have to reduce its fees by 5% of the original fee for each day it failed to make the requested records available for inspection with a maximum reduction of 50% of the total fee.

## Fee-based lawsuit and statutory exemptions

The revised statute permits an individual to file a separate, fee-based lawsuit against a municipality for the fees associated with a particular FOIA response. Under the amendment, a requesting party can directly appeal the amount of a proposed fee to the "head of the public body." However, if the City denies the fee reduction, the requesting party can file a lawsuit in the Circuit Court contesting the fee. The burden is then on the City to establish that the fee complies with the policy and the Act. **Note: The policy proposed for adoption makes the City Council the "head of the public body" for purposes of appeals.**

The new statute makes clear that a public body's failure to cite a statutory exemption in a FOIA response could prohibit it from relying upon that exemption in a subsequent FOIA lawsuit contesting the non-disclosure of records. In particular, a public body is prohibited from asserting an exemption as a defense in a FOIA lawsuit if it did not cite that exemption in its original response, unless it shows "good cause" for its failure to cite the exemption. Additionally, the trial court can reduce a public body's proposed fee by as much as 50% if it determines the public body's reliance on a newly asserted FOIA exemption was clearly erroneous.

Finally, under the new law, the punitive damage award has **increased to \$1,000**. Additionally, the trial court now has discretion to impose a **civil fine of not less than \$2,500 or more than \$7,500** if the City is found to have "willfully and intentionally" failed to comply with the statute.

## Email request and venue

The revised statute recognizes that this may pose a problem for email requests that somehow enter a public body's "spam" or "junk email" folder. As such, the calculation of time for any FOIA requests in a public body's spam or junk folder only starts when it becomes aware of the request.

Finally, the revised law limits FOIA lawsuits to the Circuit Court located in the home county of the public body at issue, which is Oakland County for Novi.

**RECOMMENDED ACTION:** Approval and adoption - Freedom of Information Act (FOIA) Procedures and Guidelines.

	1	2	Y	N
<b>Mayor Gatt</b>				
<b>Mayor Pro Tem Staudt</b>				
<b>Council Member Casey</b>				
<b>Council Member Markham</b>				

	1	2	Y	N
<b>Council Member Mutch</b>				
<b>Council Member Poupard</b>				
<b>Council Member Wrobel</b>				

# CITY OF NOVI

## Freedom of Information Procedures and Guidelines

### **Section 1: General Policies**

The City Council, acting pursuant to the authority at MCL 15.236, designates the Clerk as the FOIA Coordinator. 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 approve denials.

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. The FOIA Coordinator shall note both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

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

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator, nor other City staff, is obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

The City will make these Procedures and Guidelines document and the Written Public Summary publicly available without charge.

This Procedures and Guidelines document and the City's Written Public Summary will be maintained on the City's website at: [www.cityofnovi.org](http://www.cityofnovi.org), so a link to those documents will be provided in lieu of providing paper copies of those documents.

### **Section 2: Requesting a Public Record**

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may 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 in writing (letter, fax, email, etc.). A request must

sufficiently describe a public record so as to enable City personnel to identify and find the requested public record. The FOIA Coordinator will insist on a written request.

If a person makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

Written requests for public records may be submitted in person or by mail to the FOIA Coordinator at City Hall. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City of Novi 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 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

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 in part the request.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.
- 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.

**If the request is granted, or granted in part,** the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization

of the allowable costs incurred to process the request to the person making the request. The FOIA Coordinator will use the City's Cost Itemization Form.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the City's website at: [www.cityofnovi.org](http://www.cityofnovi.org), a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents.

If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the City will require a good-faith deposit pursuant to Section 4 of this policy before processing the request.

In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

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

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the City Manager or seek judicial review in the Oakland County Circuit Court; and
- 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.
- The Notice of Denial shall be signed by the FOIA Coordinator or the Coordinator's designee.

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 timelines described in this Section.

**If there is a request to inspect public records,** the City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

If there is a request 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 estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fees.

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

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

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

- The person making the request is able to show proof of prior payment in full to the City;
- The City is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the City.

#### **Section 5: Calculation of Fees**

A fee may be charged for the labor cost of copying/duplication. Attachment A is the Cost Schedule for the City. The FOIA Coordinator will update the Schedule as needed.

A fee will not be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the township's usual FOIA requests, not compared to the city's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)

The following factors shall be used to determine an unreasonably high cost to the City:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one City department or whether various City offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a request:

- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City. These labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City. These labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if the requestor asks for the City to make copies.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if the requestor asks for the City to make copies.
- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet. The cost to mail or send a public record to a requestor. These



labor costs will be estimated and charged in one minute increments, with all partial time rounded down.

- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- 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 work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The City may add a multiplier 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.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).

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

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The City will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the City's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will be at the actual cost to the City but will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City will provide records using double-sided printing, if there are cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.

- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the City will:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
  - The City's late response was willful and intentional,
  - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
  - 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 email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

#### **Section 6: Waiver of Fees**

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 a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The City Council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

#### **Section 7: Discounted Fees**

##### ***Indigence:***

The FOIA Coordinator will discount 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:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the City twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement.

***Nonprofit organization advocating for developmentally disabled or mentally ill individuals:***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal 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 the request meets all of the following requirements:
  - Is made directly on behalf of the organization or its clients.
  - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
  - Is accompanied by documentation of its designation by the state, if requested by the City.

**Section 8: Appeal of a Denial of a Public Record**

When a requestor 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 a written appeal to the City Council.

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the City Council will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the City Council shall respond to the written appeal. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

If the City Council fails to respond to a written appeal, or if the City Council upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in the Oakland County Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the City Council, he or she may file a civil action in Oakland County Circuit Court within 180 days after the City's final determination to deny the request.

## **Section 9: Appeal of an Excessive FOIA Processing Fee**

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, 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 must first appeal to the City Council by submitting a written appeal for a fee reduction to the public body. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the City Council will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Council will respond to the written appeal. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

Where the City Council reduces or upholds the fee, the determination must include a certification from the City Council that the statements in the determination are accurate and that the reduced fee amount complies with the City's publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the City Council's determination of an appeal, the requesting person may commence a civil action in the Oakland County Circuit Court for a fee reduction.

If a civil action is commenced against the City for an excess fee, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless one of the following applies:

- The City does not provide for appeals of fees,
- The City Council failed to respond to a written appeal as required, or
- The City Council issued a determination to a written appeal.

## **Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy

promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

# CITY OF NOVI

## Public Summary of FOIA Procedures and Guidelines

**It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees. The people shall be informed so that they may fully participate in the democratic process.**

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of The City of Novi's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the City's FOIA Procedures and Guidelines. For more details and information, copies of the City's FOIA Procedures and Guidelines are available at no charge at City Hall and on the City's website: [cityofnovi.org](http://cityofnovi.org).

### **1. How do I submit a FOIA request to the City?**

- A request must sufficiently describe a public record so as to enable the City to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the City in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City may be submitted in writing (letter, fax, email, etc.).
- Written requests may be delivered to the FOIA Coordinator at City Hall in person or by mail to the FOIA Coordinator at 45175 Ten Mile Road, Novi, Michigan 48375.
- Requests may be faxed to: 248-347-0577. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.
- Requests may be emailed to: [foia@cityofnovi.org](mailto:foia@cityofnovi.org). To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.

### **2. What kind of response can I expect to my request?**

- Within 5 business days after receiving a FOIA request the City will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The City will respond to your request in one of the following ways:
  - 1) Grant the request,
  - 2) Issue a written notice denying the request,
  - 3) Grant the request in part and issue a written notice denying in part the request,

- 4) Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond, or
  - 5) Issue a written notice indicating that the public record requested is available at no charge on the City's website
- If the request is granted, or granted in part, the City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.
  - If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

### **3. What are the City's deposit requirements?**

- If the City has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.
- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request 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 made available contained the information sought in the prior written request and remain in the City's possession;
  - 3) The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the City to provide the records;
  - 4) Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
  - 5) The individual is unable to show proof of prior payment to the City; and
  - 6) The City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

The City will not require the 100% 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 City;
- 2) The City is subsequently paid in full for all applicable prior written requests; or
- 3) Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the City.

#### **4. How does the City calculate FOIA processing fees?**

The FOIA permits the City to charge for the following costs associated with processing a request:

- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- The cost to mail or send a public record to a requestor.

#### **Labor Costs**

- All labor costs will be estimated and charged as allowed in FOIA and the City's FOIA Procedures and Guidelines.
- 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 work.
- Labor costs may also include a charge to cover or partially cover the cost of fringe benefits. The City 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.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of 6 times the state minimum hourly wage.



A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in the particular instance. The City must specifically identify the nature of the unreasonably high costs in writing.

### **Copying and Duplication**

The City will use the most economical method for making copies of public records, including using double-sided printing, if there will be cost-saving and is available.

### **Non-paper Copies on Physical Media**

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.

### **Paper Copies**

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will be charged at actual cost, not exceeding \$.10 per sheet of paper.
- Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.

### **Mailing Costs**

- The cost to mail public records will use a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless you request it.

### **Waiver of Fees**

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 a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The City Council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

## **5. How do I qualify for an indigence discount on the fee?**

The City will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

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

You are not eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the City twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement.

## **6. May a nonprofit organization receive a discount on the fee?**

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is formally designated by the state to carry out activities under subtitle C of the federal 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, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- 1) Is made directly on behalf of the organization or its clients.
- 2) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- 3) Is accompanied by documentation of its designation by the state, if requested by the City.

## **7. How may I challenge the denial of a public record or an excessive fee?**

### **Appeal of a Denial of a Public Record**

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the City Council by filing a written appeal of the denial with the office of the City Clerk.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial.

Within 10 business days of receiving the appeal the City Council will respond in writing by:

- Reversing the disclosure denial;

- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the City Council, you may file a civil action in the Oakland County Circuit Court within 180 days after the City's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

### **Appeal of an Excessive FOIA Processing Fee**

If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the City Council by filing a written appeal for a fee reduction to the office of the City Clerk.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the City Council will respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Council will respond to the written appeal.

Within 45 days after receiving notice of the City Council's determination of the processing fee appeal, you may file a civil action in the Oakland County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

**CITY of NOVI**  
**FOIA Fee Itemization Form**

<u>Component</u>	<u>Cost Calculations</u>	<u>Total</u>
<p><b>1. Labor Costs – Search, Location, and Examination of Records*</b></p>	<p>Enter the hourly wage of lowest paid employee capable of performing the search, location and examination  <div style="text-align: right;">\$ _____ per hour</div>             Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost)  <div style="text-align: right;">_____ %</div>             Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment  <div style="text-align: right;">\$ _____ / 4 = \$ _____</div>             Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate  <div style="text-align: right;">_____ x \$ _____ = \$ _____</div> </p>	<p style="text-align: right;">\$ _____</p>
<p><b>2. Employee Labor Costs – Redaction*</b></p>	<p>If performed by the public body’s employee:</p> <p>Enter the hourly wage of lowest paid employee capable of performing the redaction  <div style="text-align: right;">\$ _____ per hour</div>             Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment  <div style="text-align: right;">\$ _____ / 4. _____ = \$ _____</div>             Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate  <div style="text-align: right;">_____ x \$ _____ = \$ _____</div> </p>	<p style="text-align: right;">\$ _____</p>

<p><b>3. Contracted Labor Costs – Redaction*</b></p>	<p>If performed by Contracted Labor (Only permitted if the public body does not employ a person capable of redacting the records as determined by the FOIA Coordinator):</p> <p>Name of person or firm contracted: _____</p> <p>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. \$8.15x6=\$48.90) \$_____ per hour</p> <p>Divide the hourly rate by four (4) to determine the charge per fifteen (15) minute increment \$_____ / 4 = \$_____</p> <p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate _____ x \$_____ = \$_____</p>	<p>\$_____</p>
<p><b>4. Non-Paper Physical Media</b></p>	<p>Actual and most reasonably economical cost of:</p> <p>Flash Drives \$_____ x number used _____ = \$_____</p> <p>Computer Discs \$_____ x number used _____ = \$_____</p> <p>Other Media \$_____ x number used _____ = \$_____</p>	<p>\$_____</p>
<p><b>5. Paper Copies</b></p>	<p>Actual total incremental cost of duplication (not including labor) up to a <u>maximum of 10 cents per page</u>:</p> <p>Letter paper (8 1/2" x 11") number of sheets _____ x \$0. _____ = \$ _____</p> <p>Legal paper (8 1/2" x 14") number of sheets _____ x \$0. _____ = \$ _____</p> <p>Actual cost of other types of paper:</p> <p>Type of Paper: _____ number of sheets _____ x \$ _____ = \$ _____</p> <p>Type of Paper: _____ number of sheets _____ x \$ _____ = \$ _____</p> <p>(NOTE: Must print double-sided if available and costs less.)</p>	<p>\$_____</p>

<p><b>6. Labor Cost – Duplication Copying, and transferring records to non-paper physical media</b></p>	<p>Enter the hourly wage of lowest paid employee capable of performing the duplication, copying, or transferring digital records to non-paper physical media  <div style="text-align: right;">\$_____per hour</div></p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)  <div style="text-align: right;">\$_____ + _____ = \$_____</div></p> <p>Divide the resulting hourly wage by _____ to determine the charge per _____ ( ) minute increment  <div style="text-align: right;">\$_____ / 4 = \$_____</div></p> <p><b>(NOTE:</b> May use any time increment for this category)</p> <p>Number of _____ minute increments (partial time increments must be rounded down) multiplied by the permitted rate  <div style="text-align: right;">x \$_____ = \$_____</div></p>	<p style="text-align: right;">\$_____</p>
<p><b>7. Mailing</b></p>	<p>Actual cost of mailing records in a reasonable and economical manner:</p> <p style="text-align: right;">Cost of mailing: \$_____</p> <p>Cost of least expensive form of postal delivery confirmation:  <div style="text-align: right;">\$_____</div></p> <p>Cost of expedited shipping or insurance only if specifically stipulated by the requestor:  <div style="text-align: right;">\$_____</div></p>	<p style="text-align: right;">\$_____</p>
	<p><b>Subtotal</b></p>	<p style="text-align: right;">\$_____</p>
<p><b>Waivers and Reductions</b></p>	<p>Subtract any Fee Waiver or Reduction:  \$20.00 for indigency or nonprofit organization as further described in the Public Body’s procedures and guidelines.</p> <p>Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$_____</p>	

	The reduction amount due to the late response of the Public Body. 5% of fee x ____ days late = _____% reduction (maximum reduction is 50%)	-\$ _____
<b>Deposit</b>	Subtract any good-faith deposit received: \$ _____	-\$ _____
	<b>Total Due</b>	\$ _____

\*Note: Labor costs for search, location, examination and redaction (categories 1 and 2 on the itemization form) may not be charged unless the failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.