



cityofnovi.org

## CITY of NOVI CITY COUNCIL

Agenda Item C  
August 12, 2013

**SUBJECT:** Approval of adoption of a Resolution and Freedom of Information Act (FOIA) Policy and Fee Schedule for providing copies of public records.

**SUBMITTING DEPARTMENT:** City Clerk *m c.*

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

**BACKGROUND INFORMATION:**

The Michigan Freedom of Information Act, at MCL 15.234 permits a public body to charge a fee for providing copies of public records. Subsection (c) of MCL 15.234(3) relates to the calculation of costs by the public body, and requires that "a public body shall establish and publish procedures and guidelines to implement this subsection".

Attached for consideration by City Council is a Resolution Adopting FOIA Policy and Establishing Fees for Processing a Request. This Resolution is intended to comply with the above requirements, and it references a "Policy Establishing Procedures, Guidelines, and Fees regarding Freedom of Information Act Requests," which is also attached. The information in that proposed policy updates the City's current policy, and is intended to comply with the requirements of the FOIA statute.

Like the City's current FOIA Policy, the proposed Policy designates the City Clerk as the City's "FOIA Coordinator" pursuant to the Michigan Freedom of Information Act, Public Act No. 442 of 1996 (the "Act"), as set forth in MCL 15.236. The Act provides that the FOIA Coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving denials. The proposed FOIA Policy also designates a member of the Public Safety records staff to process requests and approve denials for FOIA requests for Police and Fire Department records.

In order to ensure consistency in the preparation of FOIA responses and the application of fees for costs pursuant to MCL 15.234 by the Clerk's Office and the Public Safety Records Division, the City Clerk's Office and the Police Department have compiled a comprehensive fee schedule including commonly requested public records. The Police Department has modified its method for calculating cost of copying in-car and booking videos from a flat fee to a fee based on the hourly cost of search, examination, review, and the deletion and separation of exempt from nonexempt information, which is consistent with the procedure the City Clerk's Office follows for calculating costs for its public records.

The cost of traffic accident reports is proposed to be \$10 per report which less than the usual cost of the report if the requestor purchases it through the CLEMIS website for \$18.

While a significant goal of the policy is to comply with the Act and confirm that the fees charged reflect the City of Novi's actual costs in providing any documentation, it is worth pointing out that the costs as set forth in the Policy are in line with those in other peer communities:

FOIA fees	8.5.x 11 copy	11 x 17 copy	Blueprint or plan copy
Novi	\$0.25	\$0.25	\$4.00
Farmington Hills	\$0.05	\$0.05	\$5.00
Troy	\$0.32	\$1.00	\$4.00

The updated FOIA Policy and Fees Schedule are consistent with the current requirements of the Act.

**RECOMMENDED ACTION:** Approval of adoption of a Resolution and Freedom of Information Act (FOIA) Policy and Fee Schedule for providing copies of public records.

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

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



JOHNSON ROSATI SCHULTZ JOPPICH PC

34405 W. Twelve Mile Road, Suite 200 ~ Farmington Hills, Michigan 48331-5627  
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela  
esaarela@jrsjlaw.com

www.jrsjlaw.com

August 1, 2013

Maryanne Cornelius, Clerk  
City of Novi  
45175 West 10 Mile Road  
Novi, Michigan 48375

**RE: Resolution and Freedom of Information Act (FOIA) Policy  
For Consideration by City Council**

Dear Maryanne:

The Michigan Freedom of Information Act, MCL 15.234 permits a public body to charge a fee for providing copies of public records. Subsection (c) of MCL 15.234(3) relates to the calculation of costs by the public body, and requires that "a public body shall establish and publish procedures and guidelines to implement this subsection".

Attached for your review and ultimately consideration by City Council is a Resolution Adopting FOIA Policy and Establishing Fee for Processing a Request. This Resolution is intended to comply with the above requirements, and it references a "Policy Establishing Procedures, Guidelines, and Fees regarding Freedom of Information Act Requests," which is also attached. In our opinion, the information in that proposed policy complies with the requirements of the FOIA statute.

The Policy has been updated for the purpose of ensuring consistency with respect to the process used to calculate fees by all departments within the City.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Elizabeth K. Saarela

EKS/sls

August 1, 2013  
Page 2

Enclosure

C: Clay Pearson, City Manager (w/Enclosure)  
Jerrod Hart, Assistant Police Chief (w/Enclosure)

**CITY OF NOVI**

**COUNTY OF OAKLAND, MICHIGAN**

**RESOLUTION ADOPTING FOIA POLICY AND ESTABLISHING  
FEES FOR PROCESSING A REQUEST**

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on \_\_\_\_\_, 2013, at 7:00 P.M. Prevaling Eastern Time.

PRESENT: Councilmembers\_\_\_\_\_

ABSENT: Councilmembers\_\_\_\_\_

The following preamble and Resolution were offered by Councilmember \_\_\_\_\_ and supported by Councilmember \_\_\_\_\_.

**RECITALS:**

WHEREAS, the City of Novi is a public body within the meaning of the Michigan Freedom of Information Act (MFOIA, found in MCL 15.231 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 Novi 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 Novi is required by the provisions of the MFOIA to grant requests by persons or corporations desiring to inspect or receive copies of existing public records, as defined by the MFOIA, when the requested documentation or information is described sufficiently to enable the public body to find the public record and is not exempt by law from disclosure;

WHEREAS, the City of Novi desires to establish procedures, guidelines and fees in accordance with and pursuant to the provisions of MFOIA 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:

1. The City Clerk is hereby designated as the FOIA Coordinator for the City of Novi, together with his or her designees as permitted under the Procedures and Guidelines adopted hereunder;

2. The attached "Policy Establishing Procedures, Guidelines, and Fees Regarding Freedom of Information Act Requests" including Schedule A, "Fees for Processing a Request," is hereby adopted by the City of Novi effective this \_\_\_\_ day of \_\_\_\_\_ 2013.

**AYES:**

**NAYS:**

RESOLUTION DECLARED ADOPTED.

---

**Maryanne Cornelius, City Clerk**

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
**Maryanne Cornelius, City Clerk**  
**City of Novi**

---

## **POLICY ESTABLISHING PROCEDURES, GUIDELINES, AND FEES REGARDING FREEDOM OF INFORMATION ACT REQUESTS**

A person may submit a written request to inspect, copy, or receive copies of public records from the City and its departments under and pursuant to the Michigan Freedom of Information Act, being Public Act No. 442 of 1976, as amended from time to time (referred to in this Policy as the "FOIA"). This Policy is adopted under and pursuant to the FOIA.

---

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

The City Clerk (Clerk) is the designated FOIA Coordinator. Additionally, the FOIA Coordinator may designate a member or members City Clerk's Office and Public Safety Records Staff to act on behalf and subject to the direction of the FOIA Coordinator.

---

### **B. RESPONSIBILITIES OF PERSON REQUESTING RECORDS UNDER THE FOIA**

1. The person requesting records must submit a written request.
2. The written request must sufficiently describe the public record(s) to enable the FOIA Coordinator or designee to identify the requested public record(s).
3. Updates and revisions to the requested information will not be automatically supplied by the City of Novi. A new written request must be made each time supplemental information is requested. This provision does not apply to subscriptions, as provided under the FOIA.

---

### **C. CITY RESPONSIBILITIES UNDER THE FOIA**

1. The FOIA Coordinator or designee shall accept, process, and respond to requests for public records in accordance with the FOIA and this Policy. The FOIA Coordinator or designee shall also receive, process, and respond to all subpoenas for records, and shall notify the City Attorney in the event a subpoena relates to pending litigation involving the City or any of its officials or employees.
2. Immediately following receipt of a FOIA request, the FOIA Coordinator or designee shall disseminate the request to appropriate City departments and personnel with such supplemental information and/or instructions as are necessary to effectively coordinate the compilation and timely delivery of the public records to the FOIA Coordinator or designee so as to enable a proper and timely response to the requesting person. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made.



3. The FOIA Coordinator or designee shall be responsible for sending a written notice of extension of response time for a period of up to ten (10) days, if such an extension is necessary and allowed under the FOIA. The notice of extension shall specify the reason(s) for the extension.
4. Following receipt of a FOIA request, the FOIA Coordinator or designee may send a notice to the person making the FOIA request seeking clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request, unless the notice specifically states that it is a denial of the request.
5. The FOIA Coordinator or designee shall respond to all written requests, in writing, within five (5) business days per the FOIA, unless a notice of extension has been sent.
6. If the request specifies an inspection of public record(s), the FOIA Coordinator or designee shall, as part of any written response granting the request, inform the requesting person of the days and times that the records are available for such inspection. 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 Novi at a reasonable time and under conditions designated by the FOIA Coordinator or designee in order to protect the City of Novi's public records and prevent excessive and unreasonable interference with the discharge of municipal functions.
7. If the request indicates that the requester wishes to have copies of public record(s) prepared and/or mailed, the FOIA Coordinator or designee shall be responsible for providing copies of non-exempt public record(s), subject to the payment of associated costs by the requestor pursuant to Section D of this Policy.
8. If requested in writing, the custodian of a public record shall provide a certified copy of a public record.
9. If the written request is denied, in whole or in part, the FOIA Coordinator or designee shall issue a written notice that includes an explanation, to the extent required by law, 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 or redact the exempt material and make the non-exempt material available for examination and/or copying. Additionally, the FOIA Coordinator or designees shall generally describe the exempt material that had to be separated or redacted in the written notice, unless doing so would reveal the contents of the exempt information and thus, defeat the purpose of the exemption. The FOIA Coordinator or designee shall certify, in writing, that the public record does not exist under the name given by the requester or by another name reasonably known to the City, if that is the reason for denying the request or a portion of the request. The written notice of denial, or partial denial, shall also include the following:

(a) a full explanation of the requesting person's right to either submit to the City Manager a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial, or seek judicial review of the denial under section 10 of the FOIA; and

(b) notice of the right to receive attorneys' fees and damages as provided in section 10 of the FOIA if, after judicial review, the circuit court determines that the City has not complied with section 5 of the FOIA and orders disclosure of all or a portion of a public record.

10. Neither the City of Novi nor the FOIA Coordinator are obligated to create a record, list, compilation or summary of information which does not already exist. This includes analyzing, compiling, or summarizing existing information into a new format. In addition, the FOIA does not impose greater retention of public record responsibilities than what is required under other provisions of the law, provided, however, that a public record that exists at the time a request for same has been received under the FOIA shall not be destroyed or discarded until the FOIA request has been responded to in accordance with the FOIA and this Policy.

11. 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.

---

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

Pursuant to the FOIA, the City of Novi is entitled to establish a policy for reimbursement to the City of certain costs incurred in processing and responding to FOIA requests. Accordingly, the costs incurred in responding to a FOIA request, as set forth in Schedule A, shall be chargeable to each FOIA requester.

1. The most economical means available for making copies of public records shall be used.
2. If a person signs an Affidavit of Indigency stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because 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.
3. If the total estimated cost of a request exceeds \$50.00, a deposit equal to one-half of the total estimated cost may be required, in a written notice to the requesting person, as a condition to completing the request.
4. A requester shall be provided a period of two weeks after the date of the written notice granting a request to pay for a FOIA request. Materials prepared in response to FOIA requests may be destroyed if left un-claimed for a period of

thirty (30) days after notice is given to the requesting person that the materials are ready.

5. Upon payment of any fees under this Section, copies shall be made of the check(s) or money order(s) and receipt(s), which shall be attached to the original FOIA request.
6. 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 or if the request for information is easily available and retrievable, and can be disseminated to the requestor at zero cost to the City.

---

## **E. CONFLICTS OF LAW AND POLICY**

In the event any provision of this Policy directly conflicts with any provision of the FOIA, the provision of the FOIA shall govern and be applied.

---

## **F. APPEALS**

Where a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the process established by the FOIA Coordinator.

**SCHEDULE A  
FEES FOR PROCESSING A REQUEST**

1. Duplication charges. Duplication charges, including the cost of hardware, software, and supplies to duplicate the type of record requested, will be charged at the following rate for the following records:

a. General Photocopies:	\$ .25 per page
b. Copies on disk	\$ 1.00 per disk
c. Site Plans	\$ 4.00 per page
d. Traffic Accident Reports	\$10.00 per report
e. Non- Traffic Accident Reports	\$ 1.00 per report
f. In-Car DVD Duplication	\$ 1.00 per disk
g. Audio WAV file	\$ 1.00 per disk
h. Booking Video	\$ 1.00 per disk
i. Fire Reports	\$ 1.00 per page

If the nature of the duplication necessitates duplication by outside sources, the actual cost of employing such outside sources shall be assessed to the requestor. Actual duplication costs will be charged for other medium requested, including, but not limited to photographs, maps, plans, or microforms, unless otherwise provided by applicable law.

Pursuant to Paragraph 2., below, in addition to duplication charges, labor charges may be included for search, examination, review, and the deletion and separation of exempt from nonexempt information, with respect to the records set forth above.

Service charges for payment by credit card may be passed on to the requestor.

2. Labor costs. Labor costs will be charged in accordance with the hourly wage of the lowest paid employee of the City of Novi 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; provided, however, that a fee shall not be charged for the 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 in such instances the FOIA Coordinator or designee shall specifically identify the nature of such unreasonably high costs.

Labor costs may vary depending on the nature of the public record or records requested, and the variation in City employees capable of retrieving the information necessary to comply with the request.

3. Delivery. Delivery of records will be made by mail unless other method is requested and is reasonably available. Actual mailing costs will be charged in accordance with US Postal Service rates unless other method of delivery is provided.