

Introduced: Bruno  
Second: Droscha

## CITY OF MASON

### CITY COUNCIL RESOLUTION NO. 2015-39

#### RESOLUTION ESTABLISHING FREEDOM OF INFORMATION ACT (FOIA) POLICIES, PROCEDURES AND GUIDELINES FOR THE CITY OF MASON

June 15, 2015

**WHEREAS**, from time to time, various departments of the City of Mason will receive Freedom of Information Act ("FOIA") requests; and

**WHEREAS**, these FOIA requests must be responded to in adherence with the Freedom of Information Act, being MCL 15.231, *et seq* (the "Act"); and

**WHEREAS**, due to the necessity of having a policy to ensure that FOIA requests are addressed in an efficient and consistent manner and pursuant to established published procedures and guidelines to implement charges for responding to FOIA requests, Council adopted Resolution No. 2000-06; and

**WHEREAS**, there were significant changes in the FOIA procedures and requirements adopted pursuant to 2014 PA 563, to be effective July 1, 2015.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mason hereby adopts the following Freedom of Information Act Policies, Procedures, and Guidelines:

1. The City Clerk is hereby designated the FOIA Coordinator for the City of Mason and is responsible for accepting and processing all FOIA requests in accordance with these Policies, Procedures, and Guidelines, with the exception of those submitted to the Police Department.
2. The Chief of Police or his or her designee, upon the designation of the City Clerk, is responsible for accepting and processing all FOIA requests submitted to the Police Department and all requests concerning Police Department documents in accordance with these Policies, Procedures, and Guidelines.
3. Each department other than the Police department receiving a FOIA request shall promptly forward the request to the FOIA Coordinator. Each department shall provide the requested information unless a determination is made that it is exempt from disclosure. If the record contains both exempt and nonexempt material, the nonexempt material shall, if possible, be separated and made available. The FOIA Coordinator shall sign and provide the final response to the requestor.

4. Unless otherwise agreed to in writing by the person making the request, the FOIA Coordinator shall respond to the request not more than five (5) business days after the request has been received, unless a 10 business day extension has been issued, in which case the FOIA Coordinator shall respond within 15 business days after the request has been received.

5. The response shall either grant the request, deny the request, or grant the request in part and deny the request in part.

6. If the request is granted in whole or in part, the response shall:

(1) State the fees, if any, for the public record search, for the necessary copying of a public record for inspection, or for providing a copy of the public record. The fees shall be charged in accordance with the Act and only those set forth in Attachment A, which is incorporated herein. The fees charged shall be itemized on a form in accordance with Attachment B. If the FOIA Coordinator has failed to respond within the time frames set forth in Paragraph 6 and either the delay was willful and intentional or the request was properly identified as a FOIA request pursuant to Section 4(9)(a)(ii) of the Act, the charges for labor costs set forth in this resolution and the attachments shall be reduced by 5% for each day the City exceeded the time for a response, with a maximum of a 50% reduction.

(2) State the amount of any deposit required pursuant to the terms of this resolution and the Act.

(3) Contain a best efforts estimate setting forth the time frame it will take the FOIA Coordinator to comply with the request.

(4) Explain which, if any, of the requested documents or information is available on the City's website, including the City's web page address and location on the website where the information can be located. The FOIA Coordinator shall identify separately in Attachment B the charges to receive copies of those documents that are available on the City's website.

(5) Fully explain the right to file a "fee appeal" to the City Administrator or commence an action in circuit court if fees are charged in excess of the amount permitted by the Act or these policies and procedures, including the possibility of being awarded all or a portion of the requesting person's attorney fees if the court reduces the fees by 50% or more of the total fee.

(6) Include a website link to these policies, procedures and guidelines on the City's website.

(7) Include a signature of the FOIA coordinator.

7. If the request is denied in whole or in part, the response shall:

- (1) Explain the statutory basis for the determination that the public record, or a part thereof, is exempt, if that is the reason for denying all or part of the request.
- (2) Certify that the public record does not exist under the name given by the requestor or any other name reasonably known to the City, if that is the reason for denying all or part of the request.
- (3) Describe any material that has been separated or deleted as required by the Act.
- (4) Fully explain the requesting person's right to appeal to the City Manager or seek judicial review of the denial in circuit court, including the right to receive attorney fees if the court determines that the City has not complied with the Act and orders disclosure of all or a portion of the public record.
- (5) Include a website link to these policies, procedures and guidelines on the City's website.
- (6) Include a signature of the FOIA coordinator.

8. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. In addition, a public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either of the following:

- (a) An individual who is entitled to information under this Act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). If a requestor is ineligible for the discount, the FOIA Coordinator shall inform the requestor specifically of the reason for ineligibility in the written response. An individual is ineligible for this fee reduction if any of the following apply:
  - (i) The individual has previously received discounted copies of public records under this subsection from the same public body twice during that calendar year.
  - (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The FOIA Coordinator may require a statement by the requestor in the affidavit

that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

(b) A nonprofit organization formally 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 the request meets all of the following requirements:

(i) Is made directly on behalf of the organization or its clients.

(ii) 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, being MCL 330.1931.

(iii) Is accompanied by documentation of its designation by the State, if requested by the public body.

9. Fees for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information shall not be charged 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 these unreasonably high costs. The costs to the City shall be deemed unreasonably high if, because of the nature of the request in the particular instance, the amount of time needed to complete the search, examination, and review, or the deletion and separation of exempt from nonexempt information, will exceed 30 minutes.

10. If a City employee receives a verbal request for information that the employee believes is available on the City's website, the employee shall, where practicable, to the best of the employee's knowledge, inform the requestor about the City's website address. The City employee shall otherwise inform the requestor of the ability to file a written FOIA request with the City.

11. The FOIA Coordinator shall require a good-faith deposit from the requestor of ½ of the total estimated fee before providing public records if the entire fee estimate or charge, as detailed on the form attached hereto as Attachment B, exceeds \$50.00. The FOIA Coordinator shall require a deposit of 100% of the estimated fee if the requestor is more than 90 days and less than 365 days delinquent in paying the fees for and receiving records from a prior request and if all of the following apply:

(1) The final fee for the prior written request was not more than 105% of the estimated fee.

(2) The public records made available contained the information being sought in the prior request and are still in the City's possession.

(3) The public records were made available to the individual, subject to payment, within the time frame estimate provided to the individual.

(4) Ninety days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing.

(5) The individual is unable to show proof of payment.

(6) The fees for the current request are itemized pursuant to Attachment B.

(7) The individual does not subsequently pay in full the applicable fees for the prior request.

12. The City Administrator, being executive officer and head of the administrative branch of the City pursuant to City Charter, is designated the head of the City for purposes of all appeals made pursuant to the Act. The following appeals, together or independently, may be made to the City Administrator.

(a) Fee appeals. A person may appeal the fee by submitting to the City Manager a written appeal for a fee reduction by specifically stating the word "appeal" and identifying how the required fee exceeds the amount permitted under these policies and procedures or the Act.

(b) Denial appeals. A person may appeal the denial of FOIA request, whether said denial was in whole or in part, by submitting 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.

13. The City Clerk shall create a written public summary, in a manner so as to be easily understood by the general public, of the policies, procedures, and guidelines contained herein that are relevant to the general public regarding how to submit written requests to the City and explaining how to understand the City's responses, deposit requirements, fee calculations, and avenues for challenge and appeal.

14. These policies, procedures, and guidelines, along with the written summary described above, shall be posted on the City's website and be provided free of charge to any person who visits the City Clerk's office and requests a copy.

15. The FOIA Coordinators designated herein, the City Manager and all City employees shall, at all times, comply with the Act. To the extent there is a conflict between the Act and the policies, procedures, and guidelines specified herein, the Act controls and shall be followed. To the extent there is an omission of any requirement of the Act and the policies, procedures, and guidelines specified herein, the requirements of the Act control and must be complied with. The City Attorney's office is available for assistance as to compliance with the Act and these policies, procedures and guidelines, the legality of any denial, or other questions relative to FOIA requests.

**BE IT FURTHER RESOLVED**, that the City Council of the City of Mason hereby authorizes the adoption of this Freedom of Information Act Policies, Procedures, and Guidelines to be effective July 1, 2015.

**BE IT FURTHER RESOLVED**, that this Resolution replaces Resolution No. 2000-06 on its effective date.

**BE IT FURTHER RESOLVED**, that the City Clerk shall forward a copy of this Resolution to all offices and departments of the City of Mason.

Yes (7) Brown, Bruno, Clark, Droscha, Ferris, Mulvany, Waltz

No (0)

**CLERK'S CERTIFICATION:** I hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the City Council at its regular meeting held Monday, June 15, 2015, the original of which is part of the City Council minutes.

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Deborah J. Cwierniewicz, City Clerk  
City of Mason  
Ingham County, Michigan

Drafted by and approved as to form:

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Thomas M. Hitch (P25558)  
Mason City Attorney  
601 Abbot Road, PO Box 2502  
East Lansing, MI 48826-2502

## ATTACHMENT A

### DETERMINATION OF FEES FOR REQUESTS MADE UNDER THE FOIA STATUTE

1. As a public body, the City of Mason may and shall, except as otherwise prohibited or as otherwise specified in Resolution No. 2015-39, charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record which shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in Section 14 of the Freedom of Information Act, being MCL 15.231, *et seq* (the "Act").

2. The total fee shall not exceed the sum of the following components and shall be itemized on the form attached hereto as Attachment B or a similar form containing at least all of the information contained in Attachment B:

(a) That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The City shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

(b) That portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in Section 14 of the Act. For services performed by an employee of the City, the City shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in Section 14 of the Act, regardless of whether that person is available or actually performs the labor. If the City does not have an employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in Section 14 of the Act as determined by the City's FOIA coordinator on a case-by-case basis, the FOIA coordinator may contract to have the task completed and treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs when calculating charges under this subdivision if the FOIA Coordinator clearly notes the name of the contracted person or firm on the detailed itemization described under subsection (4). Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state

minimum hourly wage rate determined under Section 4 of the Workforce Opportunity Wage Act, 2014 PA 138, being MCL 408.411 to 408.424. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. The City shall not charge for labor directly associated with redaction under Section 14 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body's possession.

(c) For public records provided to the requestor on nonpaper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This subdivision does not apply if the City lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.

(d) For paper copies of public records provided to the requestor, the actual total incremental cost of necessary duplication or publication, not including labor, shall be included in the costs charged to the requestor. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided. The fee shall be 10 cents per sheet of paper for copies of public records made on 8-1/2 by 11-inch paper or 8-1/2 by 14-inch paper. The FOIA coordinator shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

(e) The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor. The FOIA Coordinator shall not charge more than the hourly wage of the lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or actually performs the labor. Labor costs under this subdivision may be estimated and charged in time increments of 6 minutes (1/10 of an hour) however, all partial time increments shall be rounded down.

(f) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The FOIA Coordinator shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, but may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.

3. The department head responsible for providing the information shall determine the lowest paid employee capable of furnishing the information. The employee performing the actual service will be responsible for estimating and determining the number of minutes spent responding to each request. When calculating labor costs under this policy, fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The department head shall also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits. Attachment B shall clearly note the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4). Subject to the 50% limitation, the FOIA Coordinator shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed itemization provided to the requestor.

4. This attachment and Attachment B (or similar forms containing at least all of the information in Attachment B) are hereby adopted for use by all City departments in calculating costs associated with responding to FOIA requests.

ATTACHMENT B

City of Mason Freedom of Information Act Itemized Fees and Costs

The total amount due for the requested materials is estimated to be (total of 1-6 below) \$\_\_\_\_\_.

Note, if this box is checked, the total amount due reflects a deduction for labor (paragraphs 1, 2, and 5 below) of 5% per day for each day the response was late: \_\_\_ days @ 5% per day = \_\_\_\_\_. (Maximum of 50 %.)

A deposit of \$\_\_\_\_\_ is required to process your request.

These fees and costs are itemized as follows:

**1. Labor costs directly associated with necessary searching for, locating and examining therecords:**

Hourly wage of lowest paid employee capable \$\_\_\_\_\_ ÷ 4 = 15 minute rate of \$\_\_\_\_\_ x number of 15 minute increments necessary to search (all partial increments rounded down) \_\_\_\_\_ = Total labor for search:(costs for this labor are charged because it will take longer than 30 minutes to accomplish this task) \$\_\_\_\_\_

**2. Labor Costs for review and separation and deletion of exempt and nonexempt material:**

Hourly wage of lowest paid employee capable \$\_\_\_\_\_ ÷ 4 = 15 minute rate of \$\_\_\_\_\_ x number of 15 minute increments necessary to search (all partial increments rounded down) \_\_\_\_\_ = Total labor for separation:(costs for this labor are charged because it will take longer than 30 minutes to accomplish this task) \$\_\_\_\_\_

**3. Cost of nonpapermedia:**

Actual (& most reasonably economical) costs of each disc, tape or other media \$\_\_\_\_\_ x # provided \_\_\_\_\_ = \$\_\_\_\_\_

**4. Cost of Paper copies:**

Number of copies \_\_\_\_\_ x price per copy \$0.\_\_\_\_ = \$\_\_\_\_\_

**5. Cost of Labor directly associated with duplication or publication:**

Hourly wage of lowest paid employee capable \$\_\_\_\_\_ ÷ 10 = 6 minute rate of \$\_\_\_\_\_ x number of 6 minute increments necessary to search (all partial increments rounded down) \_\_\_\_\_ = Total copy labor of \$\_\_\_\_\_

**6. Cost of Mailing:**

Actual cost of mailing = \$\_\_\_\_\_

Note: All labor charges in paragraph 1, 2 and 5 above include a multiplier of \_\_\_% for fringe benefits.

**FEE APPEALS:**

You may appeal these fees by submitting to the City Administrator a written appeal for a fee reduction by specifically stating the word "appeal" and identifying how the fee exceeds those permitted under the City's policies or the Freedom of Information Act. Unless extended by up to 10 days with a written notice detailing the reasons for the extension, the City Administrator must respond within 10 business days after receiving the appeal and either: (1) waive the fee, (2) reduce the fee (and explain why), or (3) uphold the fee (and explain why).

If you believe the amount still exceeds the amount permitted by the City's policies or the Freedom of Information Act, you may file an action in circuit court within 45 days from the date of the City Administrator's response. If you prevail in the action and the court reduces the total fee by 50% or more, the court may, in its discretion, award all or a portion of your reasonable attorney fees, costs and disbursements. If the court determines the City acted arbitrarily and capriciously, it may award in addition to any other damages, punitive damages of \$500.00 and a civil fine of \$500.00. (Any civil fine would go to the State Treasury.)