

Public Summary of EMU's Procedures and Guidelines for Freedom of Information Act Requests

It is Eastern Michigan University's ("EMU") policy, consistent with the Michigan Freedom of Information Act ("FOIA"), that all persons, except those incarcerated in state or local correctional facilities, 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 employees. The people shall be informed so that they fully participate in the democratic process.

EMU's policy with respect to FOIA requests is to comply with State law and respond to each FOIA request in a consistent and fair manner.

EMU also acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. Sometimes, however, EMU must invoke FOIA's exemptions in denying a request, to ensure the effective operation of government and to protect the privacy of individuals under the law.

Therefore, EMU will protect the public's interest in disclosure, while withholding or redacting portions of certain records as required under the law.

EMU has established written procedures and guidelines to implement the FOIA, which are summarized below. These procedures and guidelines are also posted on EMU's webpage at: <http://www.emich.edu/legalaffairs/foia.php>.

How to submit a FOIA request to EMU:

A person wishing to inspect or receive a copy of a public record shall make a written request to the FOIA Coordinator of EMU. Requests must sufficiently describe the requested record so as to enable the Coordinator to identify and locate the public record. An email address or physical address must be provided for the response to be sent to.

Written requests should be emailed to foia.coordinator@emich.edu or mailed/dropped off in person at 11 Welch Hall, Ypsilanti, MI 48197. Requests may be submitted to any office at EMU and that office is responsible for promptly forwarding the request to the FOIA Coordinator, however, persons are encouraged to submit their requests directly to the FOIA Coordinator to avoid inadvertent delays.

Requests should state that they are submitted pursuant to the Michigan Freedom of Information Act.

The Act does not obligate EMU to create a new public record or make a compilation or summary of information which does not already exist.

A public record for purposes of FOIA is defined as *"a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software."* The Act is a document disclosure statute. Therefore, a FOIA Coordinator need not answer questions contained in requests, or inquiries about the content of the records.

How EMU processes requests

EMU must respond to a FOIA request within five (5) business days of the FOIA Coordinator receiving the request.

A response will do one or more of the following:

- Grant the request in full;
- Grant the request in part. Partially granting a request would occur when a portion of the requested records do not exist, are not in the possession of EMU, and/or are exempt from disclosure;
- Deny the request. Denying a request would occur when all of the requested records do not exist, are not in the possession of EMU, and/or are exempt from disclosure;
- Issue a notice extending the response time for no greater than ten (10) business days;
- A cost estimate;
- A notice that the record(s) sought has (have) not been sufficiently described to enable EMU to locate the record(s).

If any part of the request is denied, EMU's response will:

- include a description of what has been withheld or partially withheld;
- state the FOIA exemptions under which any information and/or documents are withheld, if applicable, and;
- provide options for appealing a denial
- advise the requester of his/her rights to receive attorney's fees and/or damages.

The FOIA provides a number of exemptions ranging from matters of privacy, medical records to most student records. ([MCL15.243](#)) The decision whether material should be withheld is made by the FOIA Office after consultation with other appropriate offices, if necessary. The FOIA Officer and FOIA Coordinator have the authority, delegated by the President, to deny a FOIA request in part or in full.

Deposit requirements

A good-faith deposit is required when the processing of a request will result in fees greater than \$50.00. The required deposit will equal up to 50% of the estimated cost of fulfilling the request as calculated at the time of the initial response. EMU will further process the request once the good-faith deposit is received.

Failure to pay the good-faith deposit will be deemed as a withdrawal of the request.

If, during the processing of the request, EMU determines that the actual costs will be higher than the original estimate, a revised cost itemization will be provided to the requesting party indicating the higher fee.

All cost estimates will include a non-binding, best efforts estimated time frame of when the final response will be provided.

Calculation of fees

Fees are calculated by adding together the following costs (see Fee Itemization Form attached):

- The labor costs for searching for, locating, and examining responsive records
- The labor costs for review, separation, and deletion of exempt information from non-exempt information
- The cost of non-paper physical media, if used
- The cost per copy of paper copies, not to exceed \$.10/page for standard 8 ½ x 11 inch paper
- The labor costs directly associated with duplication or publication, which may include copying to non-paper media
- The cost of mailing

EMU reserves the right to require payment in full of all fees included in the fee itemization calculation provided to the requester before delivering the final, responsive documents.

Fee reductions or waivers are required in certain instances involving proven indigence or non-profit organizations. When applicable, EMU will apply these reductions or waivers in accordance with the statute.

Procedures for appeals

If EMU denies a request in whole or in part, the requester may:

- Submit an appeal to the President, in writing. The appeal must specifically use the word “appeal” and identify the reason(s) the requester seeks reversal of the denial.

Via email: president@emich.edu

Via standard mail: Eastern Michigan University
ATTN: President
202 Welch Hall
Ypsilanti, MI 48197

The President must respond to the appeal within ten (10) business days by doing one of the following:

- Reverse the FOIA Coordinator’s decision, in part or in full;
 - Uphold the FOIA Coordinator’s decision;
 - Issue a notice of extension for not more than ten (10) additional business days.
- Commence a civil action in the Court of Claims within one hundred eighty (180) days after EMU’s final determination to deny the request.

If a requester believes that EMU has required payment of a fee that exceeds the amount permitted under these Procedures and Guidelines, he or she may commence an action in the Court of Claims for a fee reduction within forty-five (45) days after receiving the notice of the required fee. In this situation, EMU is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

Eastern Michigan University Freedom of Information Act Fee Itemization Form

Requesting party:

Request description:

15.234 Sec. 4. (1) Category & Description of Costs (See attached for full text)

(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.

Hourly Wage	Benefits % multiplier*	Hourly wage w/ benefits	Estimated time (in hours)	Estimated fee	Actual fee
	0.35			\$ -	

(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.

Hourly Wage	Benefits % multiplier*	Hourly wage w/ benefits	Estimated time (in hours)	Estimated fee	Actual fee
	0.35			\$ -	

(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.

Physical Media Type	Estimated fee	Actual fee

(d) For paper copies of public records provided to the requestor, the actual total incremental cost of necessary duplication or publication, not including labor.

Estimated # of paper copies	Fee per page	Estimated fee	Actual fee

(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.

Hourly Wage	Benefits % multiplier*	Hourly wage w/ benefits	Estimated time (in hours)	Estimated fee	Actual fee

(f) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner.

Sent via	Estimated fee	Actual fee

Cost estimate total:	\$ -
Good faith deposit:	\$ -
Actual cost	\$ -
Balance due:	

Make check payable to:
Eastern Michigan University
11 Welch Hall
Ypsilanti, MI 48197
ATTN: FOIA Coordinator

*The university may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used.

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.234 Fee; limitation on total fee; labor costs; establishment of procedures and guidelines; creation of written public summary; detailed itemization; availability of information on website; notification to requester; deposit; failure to respond in timely manner; increased estimated fee deposit; deposit as fee; failure to pay or appeal deposit; request abandoned.

Sec. 4. (1) A public body may 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 if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4). Subject to subsections (2), (3), (4), (5), and (9), the fee must 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. Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee must not exceed the sum of the following components:

(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 public body 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 who 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. For services performed by an employee of the public body, the public body 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, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14 as determined by the public body's FOIA coordinator on a case-by-case basis, it may 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 it 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 must not exceed an amount equal to 6 times the state minimum hourly wage rate determined under section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. A public body 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 a public body 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. 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 must not exceed 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. A public body 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 public body shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision may be estimated and charged in time increments of the public

body's choosing; 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 public body 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.

(2) When calculating labor costs under subsection (1)(a), (b), or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4). Subject to the 50% limitation, the public body 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 described in subsection (4). 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 public body 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. 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 public body shall inform the requestor specifically of the reason for ineligibility in the public body's 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. A public body 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, MCL 330.1931.

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

(3) A fee as described in subsection (1) shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless 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.

(4) A public body shall establish procedures and guidelines to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary shall be written in a manner so as to be easily understood by the general public. If the public body directly or indirectly administers or maintains an official internet presence, it shall post and maintain the procedures and guidelines and its written public summary on its website. A public body shall make the procedures and guidelines publicly available by providing free copies of the procedures and guidelines and its written public summary both in the public body's response to a written request and upon request by visitors at the public body's office. A public body that posts and maintains procedures and guidelines and its written public summary on its website may include the website link to the documents in lieu of providing paper copies in its response to a written request. A public body's procedures and guidelines must include the use of a standard form for detailed itemization of any fee amount in its responses to written requests under this act. The detailed itemization must clearly list and explain the allowable charges for each of the 6 fee components

listed under subsection (1) that compose the total fee used for estimating or charging purposes. Other public bodies may use a form created by the department of technology, management, and budget or create a form of their own that complies with this subsection. A public body that has not established procedures and guidelines, has not created a written public summary, or has not made those items publicly available without charge as required in this subsection is not relieved of its duty to comply with any requirement of this act and shall not require deposits or charge fees otherwise permitted under this act until it is in compliance with this subsection. Notwithstanding this subsection and despite any law to the contrary, a public body's procedures and guidelines under this act are not exempt public records under section 13.

(5) If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If the public body has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form as described under subsection (1)(c), the public body shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.

(6) A public body may provide requested information available in public records without receipt of a written request.

(7) If a verbal request for information is for information that a public body believes is available on the public body's website, the public employee shall, where practicable and to the best of the public employee's knowledge, inform the requestor about the public body's pertinent website address.

(8) In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee described in subsection (4). Subject to subsection (10), the deposit must not exceed 1/2 of the total estimated fee, and a public body's request for a deposit must include a detailed itemization as required under subsection (4). The response must also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

(9) If a public body does not respond to a written request in a timely manner as required under section 5(2), the public body shall do the following:

(a) Reduce the charges for labor costs otherwise permitted under this section by 5% for each day the public body exceeds the time permitted under section 5(2) for a response to the request, with a maximum 50% reduction, if either of the following applies:

(i) The late response was willful and intentional.

(ii) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

(b) If a charge reduction is required under subdivision (a), fully note the charge reduction on the detailed itemization described under subsection (4).

(10) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(11) Subject to subsection (12), after a public body has granted and fulfilled a written request from an

individual under this act, if the public body has not been paid in full the total amount under subsection (1) for the copies of public records that the public body made available to the individual as a result of that written request, the public body may require a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

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

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

(c) The public records were made available to the individual, subject to payment, within the time frame estimate described under subsection (8).

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

(e) The individual is unable to show proof of prior payment to the public body.

(f) The public body calculates a detailed itemization, as required under subsection (4), that is the basis for the current written request's increased estimated fee deposit.

(12) A public body shall no longer require an increased estimated fee deposit from an individual as described under subsection (11) if any of the following apply:

(a) The individual is able to show proof of prior payment in full to the public body.

(b) The public body is subsequently paid in full for the applicable prior written request.

(c) Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the public body.

(13) A deposit required by a public body under this act is a fee.

(14) If a deposit that is required under subsection (8) or (11) is not received by the public body within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount pursuant to section 10a, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. Notice of a deposit requirement under subsection (8) or (11) is considered received 3 days after it is sent, regardless of the means of transmission. Notice of a deposit requirement under subsection (8) or (11) must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015;—Am. 2018, Act 523, Imd. Eff. Dec. 28, 2018.

Constitutionality: The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. *Kestenbaum v Michigan State University*, 414 Mich 510; 417 NW2d 1102 (1982).

Popular name: Act 442

Popular name: FOIA