

**City of Chelsea
Freedom of Information Act Procedures and Guidelines**

Effective Date: July 1, 2015

Preamble: Statement of Principles

It is the procedure of the City of Chelsea that all persons, except those who are serving a sentence of imprisonment, consistent with the Michigan Freedom of Information Act (FOIA), 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.

The City of Chelsea's procedure with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City of Chelsea acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Chelsea acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Chelsea will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Chelsea's procedure is to disclose public records consistent with and in compliance with State law.

General Policies:

- A. Appointment of FOIA Coordinator.** In accordance with Section 6 of the Freedom of Information Act (FOIA), MCL 15.236, the City of Chelsea has appointed a FOIA Coordinator for City Office as well as a FOIA Coordinator for the Police Department. The names of the FOIA Coordinators are available at the City Office.
- B. Submission of FOIA Request.** FOIA requests must be in writing. Requests can be submitted by email to: FOIA@city-chelsea.org (please include the term "FOIA" or "FOIA Request" in the subject line), by fax to (734) 475-1811, or delivered in person to any City Office staff.

Requests can be mailed to:

City of Chelsea
FOIA REQUEST
305 S. Main Street Suite 100
Chelsea, MI 48118

All requests should include a name, phone number, and mailing address of the requestor as well as a sufficiently described public record so as to enable the City to locate it. No specific form is required to submit a request for public records; however a FOIA Request Form is provided for your convenience.

- C. Immediately Forward FOIA Request.** Any employee of the City of Chelsea who receives a written request for a public record must immediately forward that request to the Freedom of Information Coordinator at FOIA@city-chelsea.org. If a City of Chelsea employee receives an electronic written request for a public record that is delivered to a spam or junk-mail folder, the employee must record the date and time the written request was delivered to the spam or junk-mail folder and date and time the employee first became aware of the written request. The employee must forward those dates and times to the FOIA Coordinator with the written request.

- D. Request Response Time.** The City of Chelsea may extend the time for responding by an additional ten business days by notifying the requesting person in writing of the reason for the extension and the new due date (MCL 15.235(2)(d) and (6)). Due to the short statutory time period within which the

City of Chelsea must issue a written notice in response to the FOIA request, it is imperative that there be no delay in complying with the City of Chelsea procedures and guidelines.

E. Response to a FOIA Request. Only the City of Chelsea's FOIA Coordinators will respond to FOIA requests. The City of Chelsea will provide copies of these procedures and guidelines and a summary of these procedures and guidelines with each written response or provide a link to an on line version of these documents. If a request is denied, in full or in part, the City of Chelsea will provide the requestor an explanation of the basis of the denial under the FOIA, and give notice to the requestor of his or her remedial rights (MCL 15.235(4)).

F. Notification of FOIA Request. Upon receipt of a FOIA request, a FOIA Coordinator will contact the work site(s) that might possess records responsive to the FOIA request by email or fax. The contact will include a date the documents are due to the FOIA Coordinator.

G. Work Site Response to City of Chelsea's FOIA Coordinator. As soon as possible, but not later than the date provided by the FOIA Coordinator, the work site's response is due to the FOIA Coordinator. If no documents responsive to the request exist, the work site must notify the FOIA Coordinator that no records will be sent.

H. Assessment of Fees for a FOIA Request. The FOIA permits the City of Chelsea to charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material, but only if the failure to charge a fee would result in unreasonably high costs to the City of Chelsea because of the nature of the request in the particular instance, and the City of Chelsea identifies these unreasonably high costs (MCL 15.243(1) and (3)).

The following fee guidelines for calculating labor and material costs incurred in processing FOIA requests are established pursuant to MCL 15.234(3):

1. Fees will be uniform and not dependent upon the identity of the requesting person.
2. Fees will be itemized using the attached form and will include:
 - A. Labor costs for the search, location, and examination of public records which will be calculated using the hourly wage of the City of Chelsea's lowest paid employee capable of conducting the search, location, and examination, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the City of Chelsea's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - B. Labor costs for the review of public records and separation and deletion of exempt from nonexempt material which will be calculated using the hourly wage of the City of Chelsea's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the City of Chelsea's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - C. Non-paper physical media costs will be calculated using the actual and most reasonably economical cost of computer discs, computer tapes, and other digital and similar media provided by the City of Chelsea.
 - D. Duplication and publication costs for paper copies will be calculated using the actual total incremental cost of necessary duplication or publication of a public record, not including labor. The actual and incremental cost, calculated per sheet, shall be charged and will not exceed ten cents per sheet of paper for letter or legal size paper. The City of Chelsea shall

use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available.

E. Labor costs for the duplication or publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on non-paper physical media or through electronic means, will be calculated using the hourly wage of the employee capable of duplicating or publishing the public records, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of one minute with all partial increments rounded down. The hourly wage will be based on the City of Chelsea's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.

F. Actual costs of mailing using a reasonably economical and justifiable manner.

3. No City of Chelsea employee shall stipulate to work overtime or include overtime wages in the labor costs described in these procedures and guidelines.

4. If a requestor submits an affidavit of indigence, the first \$20.00 of a fee will be waived. A requesting person must include a statement that the request is not being made in conjunction with outside parties who are offering or providing payment to make the request. An individual is not eligible to receive the waiver if the requestor has previously received the discounted copies of public records from the City twice during the calendar year. Other than \$20.00 for cases of indigence, no City of Chelsea employee shall waive a fee or any part of a fee without authorization from a FOIA Coordinator.

5. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the City of Chelsea's lowest paid employee capable of monitoring the inspection. The hourly wage will be based on the City of Chelsea's payroll records for the applicable fiscal year. Note: Section 3(3) of the FOIA, MCL 15.233(3), provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."

6. If a statute authorizes the sale or production of public records to the public for a specified fee or if a fee for production of public records is otherwise set by statute, the City of Chelsea will charge the statutory fee in lieu of a fee calculated using the guidelines set forth above.

I. Deposit Requirements. If the City of Chelsea estimates a fee to process a FOIA request greater than \$50.00, the City of Chelsea will require a good-faith deposit from the requestor before processing the request. The deposit shall not exceed 1/2 of the total estimated fee. Any written notice containing a request for a deposit shall also contain a best efforts estimate by the City of Chelsea regarding the time frame after a deposit is received that it will take the City of Chelsea to provide the public records to the requestor. The time frame estimate is not binding upon the City of Chelsea, but the City of Chelsea 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 of the FOIA, MCL 15.231, and the nature of the request in the particular instance.

J. Appeals of Fees and Disclosure Determinations. If the City of Chelsea charges a fee or denies all or part of a request, the requestor may submit to the City Manager a written appeal that specifically states the word "appeal" and identifies the basis for which the fee should be reduced or the disclosure determination should be reversed. The City of Chelsea is not considered to have received a written appeal until the first regularly scheduled City Council board meeting following the submission of the written appeal.

1. Process to Appeal 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 an appeal of the denial directed to the City

Manager. 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 Manager will respond in writing by:

- a) reversing the disclosure denial;
- b) upholding the disclosure denial;
- c) reversing the disclosure denial in part and upholding the disclosure denial in part

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

Any exemption to the release of requested public records shall be narrowly construed and the burden shall be upon the FOIA Coordinator to demonstrate that the denial of information is justified and should be upheld. The City Manager shall provide a copy of his or her written response to the appeal to the other members of the City Council, and file a copy with the City Clerk for public inspection.

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

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the City arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000. The court shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.

2. Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee or the good faith deposit charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction directed to the City Manager. 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 Manager will respond in writing by:

- a) waiving the fee;
- b) reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- c) upholding the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Mayor that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.

The City Manager shall provide a copy of his or her written response to the appeal to the other members of the City Council, and file a copy with the City Clerk for public inspection.

Within 45 days after receiving notice of the City Manager's determination of a fee appeal, a requestor may commence a civil action in Washtenaw County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails 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 City has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.