

CITY OF NEW BALTIMORE

FREEDOM OF INFORMATION ACT (FOIA) POLICY

This Policy was established pursuant to Resolution No. 559, adopted by the City Council of the City of New Baltimore on Sept. 22, 2003. The Policy identifies the procedures that City Officers and employees are to follow when processing a request in accordance with Act No. 442 of the Public Acts of 1976, as amended (the "Act").

SECTION 1. DEFINITIONS

Act: The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.

FOIA Coordinator: The individual, designated by the City Council, who is responsible for accepting and processing for public record(s) as outlined in this Policy and the act, and who is responsible for approving denials of requests, or that individual's designee as provided.

Person: An individual, corporation, organization, or other legal entity, as modified by the Act.

Public Body: The City of New Baltimore and its duly constituted departments, Commissions, boards or committees.

Public Record(s): A writing which is prepared, owned, used, in the possession of or retained by a public body in the performance or an official function from the time it is created and as otherwise defined by the Act.

Unusual Circumstances: Entails the need to search for, collect, or appropriately examine or review a voluminous amount of public record(s) and/or the need to collect public record(s) from numerous locations apart from the processing office.

Where not otherwise defined, the words and phrases contained in this Policy shall have the meaning given to them, if any, by the Act.

SECTION 2. RIGHT TO RECORD(S)

A person has the right to submit a written request for public record(s) from the City and its departments, unless that person is in custody and/or prison for a violation of the law. (Freedom of Information Act Worksheet. Appendix A.) The request must sufficiently describe the public record(s) to enable the FOIA Coordinator to identify the requested public record(s).

A person has the right to inspect a public record(s), unless exempted by law or court order. Original public record(s) are not to be released from the City Offices where the public record(s) are secured. A person may request that the copies of a public record(s) be provided subject to the payment of fees outlined in Section 4.

A person has the right to subscribe to future issuances of regularly published records as outlined in Section 3 of the Act for a period of six months or less, which request may be renewed.

Upon request, a person will be provided with a reasonable opportunity to examine the public record(s) provided by the public body. However, in the interest of protecting original records from loss, unauthorized alteration, mutilation or destruction, a copy will be made and the requesting party shall be charged subject to the payment of fees as outlined in Section 4. Persons with special needs should contact the FOIA Coordinator to insure that arrangements for special needs or reasonable facilities are prepared.

SECTION 3. RIGHTS AND OBLIGATIONS OF THE PUBLIC BODY

The FOIA Coordinator shall provide reasonable facilities and opportunities for person(s) to inspect public records. To implement this Section, the FOIA Coordinator may prepare and submit to the City Council for its approval rules to regulate the time and manner in which records are reviewed, to protect the records and to prevent excessive interference with the public body's normal operations.

The FOIA Coordinator shall provide a certified copy of a public record(s) if a person requests the same in writing.

Neither the public body nor the FOIA Coordinator are obligated to create a record, list, compilation, or summary of information which does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. All public records shall be retained per the City's approved retention schedule. Neither the public body nor the FOIA Coordinator are obligated to provide answers to oral or written questions.

The FOIA Coordinator shall provide copies of any public record(s) as provided for in the Act and shall retain a copy of all written requests on file for a period of not less than one (1) year. The FOIA Coordinator will follow the provisions of Section 4 of this Policy.

SECTION 4. PROVISIONS FOR COPYING PUBLIC RECORDS

The City of New Baltimore shall adopt, by resolution, a schedule of fees for providing copies of public records. (Schedule of Fees. Appendix B.) All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the City Council. Postage and handling shall also be charged as applicable and shall include the exact postage, as well as the cost for envelopes or other containers used for mailing copies of the public records requested.

The FOIA Coordinator shall charge a fee for the labor involved with searching for, examining, separating, deleting, reviewing, copying, mailing and necessary duplication for inspection a public record(s) as permitted by the Act. In determining whether to charge a fee for labor, the FOIA Coordinator shall consider the anticipated cost to the City, the need for a devoted staff member to adequately respond to the particular request, and similar factors. The estimated labor charges that are involved will be included on the FOIA Worksheet (see FOIA Worksheet, Attachment A). Labor costs shall be charged at the hourly wage plus fringe benefits of the lowest paid public employee capable of retrieving the information necessary to comply with the request as determined by the FOIA coordinator. Where total fees and charges are reasonably anticipated to exceed Fifty Dollars (\$50.00), the public body is further authorized to require that fifty percent of the estimated fees and charges be paid in advance of the performance of the work as authorized by the Act. The balance must be paid prior to the release of the public record copies. The FOIA Coordinator shall not charge additional fees for certification of any copies.

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

duplication for inspection, or for making copies of the record(s). Where it is necessary to copy the public record(s) before the exempt and nonexempt materials are separated so that the nonexempt material may be made available for examination or inspection, labor costs for copying shall be imposed.

The City of New Baltimore has limited in-house capabilities for copying photographs, audio or videotapes, microforms, maps or plans. If a person requests copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body is required to deliver and/or pick up the public records and/or copies of public records, the labor costs spent and applicable mileage (at City rates) will also be applied to the charges to the person(s) requesting the public records.

Copy fees and mailing charges for future issuances of regularly published public records will be arranged through the FOIA Coordinator. A person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record(s) for a period of time, not to exceed six months, unless extended. The FOIA Coordinator must sign the request form to confirm that the public record is one that is regularly published.

The City requires that an escrow deposit of \$50.00 be paid when a request for copies of regularly published public records is made to the FOIA Coordinator. The escrow must be made to the Clerk's Office prior to receiving any regularly published public records. The City will charge against the escrow for the costs of copying and postage as outlined in Section 4. There will be no labor charges since this must be a public record that is routinely developed. An account sheet of the number of copies and costs for mailing will be maintained by the FOIA Coordinator. If the escrow deposit is reduced to \$5.00 or less prior to the expiration of the request, the FOIA Coordinator will contact the person for an additional deposit or termination of the request. (See FOIA Worksheet for Future Issuances. Appendix C).

A public records search shall be made and a copy of public records shall be furnished without charge for the first \$20.00 of the fee for each request of an individual who is entitled to information under this Act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing an inability to pay the costs because of indigence. (Affidavit of Indigence. Appendix D.)

SECTION 5. PROCEDURES OF THE PUBLIC BODY IN PROCESSING A FOIA REQUEST

After a person has made a written request for a public record in accordance with the Act, the FOIA Coordinator shall respond within five (5) business days in one of four ways:

1) Grant the request.

If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will contact the person to arrange for inspection at a reasonable time.

If the request indicates that the person wishes to have copies of a public record prepared and/or mailed, the FOIA Coordinator may first mail a FOIA Worksheet to the person and request a fifty percent payment of the anticipated charges and fees.

Upon receiving the person's executed FOIA Worksheet, where required, along with the payment due, the FOIA Coordinator will respond by providing those public records.

2) Issue a written notice denying the request. The notice of denial shall include:

- >an explanation as to why the requested public record is exempt from disclosure in accordance with the Act, or
- >an explanation that the requested public record does not exist under the name given by the person or another name reasonably known to the public body, or
- >an explanation or general description of information which had to be separated or deleted from the public record pursuant to Section 6 of this Policy.

In addition to the explanations noted above, the denial shall also include an explanation of the person's right to appeal the denial to the City Council and/or seek judicial review in accordance with the Act.

- 3) Grant the request in part, and issue a written notice denying the request in part. In the latter instance, the public records exempted from disclosure should be treated as in (2) above.
- 4) Issue a written notice extending the time in which to respond to the request by ten (10) business days. (Notice of Ten Day Extension. Appendix E.)

Where a written request is received which does not sufficiently describe the public records requested so as to enable the FOIA Coordinator to locate same, the FOIA Coordinator may send notice to the person requesting a clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request for purposes of the Act or this Policy.

SECTION 6. PROCEDURES FOR SEPARATION OF RECORDS

If a request is made for an existing public record that included information which is exempt from disclosure under the Act and information which is not exempt, the FOIA Coordinator must separate the material and make the non-exempt material available for examination and/or copying. Additionally, the FOIA Coordinator is directed to generally describe the material, which had to be separated, unless doing so would reveal the contents of the exempt information, and thus defeat the purpose of the exemption. The labor costs associated with such procedures shall be treated in accordance with Section 4.

SECTION 7. DESIGNATION OF FOIA COORDINATOR

The City Clerk is hereby designated to be the City's FOIA Coordinator. In addition, the following officers shall be authorized to act as FOIA Coordinator designees: the Deputy City Clerk, the Fire Department Assistant Chief, the Fire Chief, the Police Department Records Supervisor, the Police Chief, and the Police Lieutenant. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records and approve denials in accordance with MCL 15.235(4) and (5).

SECTION 8. APPEALS

In accordance with the Act, where a person's request for a public record is denied, in whole or in part, the person shall be entitled to file a written appeal of the decision in accordance with the following process:

1. The person shall be advised by the FOIA Coordinator of the right to file a written appeal to the City Council.

2. Where a written appeal is received by the City in accordance with the Act, the City Council shall either:
 - (i) place the appeal on the agenda for the next regularly scheduled meeting where unusual circumstances are found to exist; or (ii) consider and decide the appeal at the meeting at which it was received; or (iii) direct that a special meeting be held to consider whether the appeal should be scheduled. In its consideration of any appeal, the City Council shall review the materials submitted by the appellant, any written comments received from the FOIA Coordinator, and such other information as the City Council deems necessary.

3. The City Council may deliberate and take one of the following actions in response to the filing of an appeal:
 - (a) Reverse the disclosure denial.
 - (b) Issue a written notice to the requesting person affirming the disclosure denial.
 - (c) Reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.

FREEDOM OF INFORMATION ACT WORKSHEET

Requested by: _____
(Name)

(Address)

(Telephone Number)

The fees and costs outlined below are being provided in response to your written request for a copy of a public record as outlined in the City of New Baltimore Freedom of Information Act Policy.

DATE THE FREEDOM OF INFORMATION REQUEST WAS RECEIVED: _____

PUBLIC RECORD(S) REQUESTED:

1. TOTAL COPYING COSTS: \$ _____

2. TOTAL MAILING COSTS: \$ _____

3. ESTIMATED LABOR COSTS: \$ _____

a. Labor costs for mailing, necessary duplication for inspection and/or for copying: \$ _____

b. Due to unreasonably high costs to the City of New Baltimore for the search, examination, review and (if applicable) the deletion and separation of exempt from nonexempt information a fee for labor is being charged due to:

_____ x \$ _____ = \$ _____

4. TOTAL COSTS OF ITEMS 1 THROUGH 3 ABOVE: \$ _____

SCHEDULE OF FEES

SERVICE	COST TO CITIZEN
Labor cost for search, examination, review, and deletion and separation of exempt from nonexempt information (if applicable)	Hourly wage, plus fringe benefits of the lowest paid public employee capable of retrieving the information necessary to comply with the request as determined by the FOIA Coordinator (charged in 10 minute increments, but in no event less than 10 minutes)
Labor cost for mailing, necessary duplication for inspection, or for copying of the public record(s)	Same as above
Mailing costs	Actual cost
Photocopying	10 cents per page
Deposits	One-half the cost of estimates over \$50.00

In all instances, money must be received before copies are delivered or before searching and reviewing commences if a deposit is required. No services will be provided to persons who owe money to the City of New Baltimore as a result of a prior request to review or receive copies of the City's public records.

In addition to above fees, in the event of special costs, such as copying of codes, maps or other specialized items, a separate fee for each shall be established by the department providing same for photocopying the public record requested.

FREEDOM OF INFORMATION ACT WORKSHEET FOR FUTURE ISSUANCES

Under Section 4 of the City of New Baltimore's Freedom of Information Policy, a person can request that a public record, which is regularly published, be sent to them or for pick up of the public record for a period of time, not to exceed to six months, unless extended. The FOIA Coordinator must sign the request form to confirm that the public record is one regularly published in order for this worksheet to be validated.

The City requires that an escrow deposit of \$50.00 be paid when this request is made to the FOIA Coordinator. The City will charge against that escrow deposit for the costs of copying and postage as outlined under Section 4 of the FOIA Policy. An account sheet of the number of copies and costs for mailing will be maintained by the FOIA Coordinator. If the escrow deposit is reduced to \$5.00 or less prior to the expiration of the term of the FOIA request, the FOIA Coordinator will contact the person for an additional deposit or termination of the request.

I, _____, have read and agree to the terms listed above.

Public record(s) requested:

Period of request (not to exceed six months):

I request that the record(s) be:

_____ Sent to me at: _____

OR

_____ Pick up: Phone: _____

Signature: _____ Date _____

I confirm that the public record(s) requested above are regularly published by the City of New Baltimore. The City has received the escrow deposit of \$50.00 and agrees to provide copies of the public record(s) as requested for the period listed above or until the request is terminated due to lack of escrow funds for copying and postage charges as described above.

Signature of FOIA Coordinator: _____

NOTICE OF TEN DAY EXTENSION

To: Name: _____
Address: _____

The time for responding to your request for disclosure of public record(s) dated _____ has been extended to the 15th working day following the date of your request for the following reason(s):

_____ The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public record(s) pursuant to a single request.

_____ The need to collect the requested public record(s) from numerous other offices.

FOIA Coordinator

Date

NOTICE OF DENIAL OF REQUEST FOR DISCLOSURE OF INFORMATION

Name: _____

Address: _____

Date of Request: _____

Your request for disclosure of information has been denied (in whole) or (in part) for one or more of the following reasons:

- _____ A public record does not exist under the name given.
- _____ Requested record(s) are of a personal nature and the disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- _____ Requested record(s) are investigating record(s) compiled for law enforcement purposes.
- _____ Requested record(s) are trade secrets or commercial or financial information voluntarily provided to an agency for developing governmental policy.
- _____ Requested record(s) are subject to attorney-client privilege.
- _____ Requested record(s) are subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- _____ Requested record(s) are a bid or proposal to enter into a contract or agreement prior to the time established for submission or public opening.
- _____ Requested record(s) are appraisals of real property to be acquired prior to an agreement for purchase, or less than three (3) years after the appraisal date.
- _____ Requested record(s) are communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final determination of policy or action.
- _____ Requested record(s) are record(s) of law enforcement communication codes, or plans for development of law enforcement personnel.
- _____ Requested record(s) are record(s) of a law enforcement agency and identify an informer, identify an undercover officer, disclose personal address or family members, disclose operation, reveal contents of manuals, endanger life of officers, disclose personnel records of officers, or identify residences agency is requested to check on.
- _____ Requested record(s) are record(s) of security measures.
- _____ Requested record(s) are information relating to a civil action in which the requesting party and the public body are parties.

_____ Requested record(s) would disclose the social security number of an individual.

_____ Other _____

If your request for record(s) is denied, you may submit a written appeal, specifically stating "appeal" and stating the reasons for appeal, to the attention of the City Council, or seek judicial review under Section 10 of the Act within 180 days after the public body's final determination. Within 10 days of receiving a request for an appeal, the City Council shall: a) reverse the denial; b) issue a written notice upholding the denial; c) reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part; or d) issue a notice extending by 10 business days the time to decide the appeal. (Note: If a board of commission is the head of the public body it is not considered to have received a written appeal until the first regularly scheduled meeting following submission of the written appeal.)

If after judicial review, the Circuit Court determines that the public body has not complied fully with the disclosure requirements, the Court shall award reasonable attorneys' fees, costs and disbursements. If the Court determines that the public body has arbitrary and capriciously violated the Act, the Court shall award punitive damages in the amount of \$500.00.

A copy of this request will be kept on file for no less than one (1) year.

FOIA Coordinator