

# MSU Freedom of Information Act Processing

*(Effective date July 1, 2015)*

## Summary

Section 1 of the Michigan Freedom of Information Act ("FOIA" or "the statute") provides, "It is the public policy of this state that all persons, except those persons 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 public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process."<sup>1</sup> To that end, all people, excluding prisoners, are allowed to file FOIA requests with Michigan State University ("MSU" or "the University"). A requester must simply file a request in writing with MSU's FOIA Office, and MSU will begin processing his or her request.<sup>2</sup>

MSU, in its initial response, will do one of the following within the timeframe permitted by the statute: grant the request, partially grant the request, deny the request, inform the requester that additional time is needed, require a fee deposit prior to further processing, or inform the requester that the requested record has not been sufficiently described.

If a request is denied or partially denied, MSU will explain why the documents have not been released and inform the requester of his or her challenge and appeal options.

A fee deposit will be required when processing a request will require significant MSU employee time and resources. The University will notify the requester of the estimated cost and provide a non-binding, best efforts estimate of the time it will take to complete the processing of the request. It is possible that after further processing of the request, the University will determine that the cost of processing the request is significantly less or greater than the estimated cost. If that is the case, MSU will notify the requester to allow the requester to determine whether and how he or she wants to proceed with the request. After MSU receives a required deposit, it will make every effort to provide the requested documents within the time estimate provided. Requesters must understand, however, that at any given time, MSU is processing multiple requests and cannot devote all of its time to one particular request.

If a requester feels that he or she was wrongly denied responsive documents, he or she may appeal to the President of MSU or file a civil action. If a requester believes that MSU has required a fee that exceeds the amount permitted under the Procedures and Guidelines, he or she may file a civil action. Requesters are also always free to contact the FOIA Office with any questions about the processing of their requests.

Detailed Procedures and Guidelines follow.

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<sup>1</sup> M.C.L.A. 15.231.

<sup>2</sup> Verbal requests for information are not FOIA requests for purposes of these Procedures and Guidelines. If a verbal request for information is received by an MSU employee who knows that the information is available on MSU's website, the employee, where practicable, will inform the requester about MSU's website address.

# MSU FOIA Procedures and Guidelines

## 1. How to submit a FOIA request to MSU

- a. A FOIA request must be submitted in writing to the MSU FOIA Office. The request may be transmitted in hard copy, by email, or by facsimile.
- b. MSU's FOIA Office address is Olds Hall, 408 West Circle Drive, Room 1, East Lansing, Michigan, 48824. The email address is foia@msu.edu. The fax number is 517/353-1794.
- c. A request should describe the record(s) sought sufficiently to enable MSU to find the record(s) and should provide the requester's contact information.
- d. Requests should state that they are submitted pursuant to the Michigan Freedom of Information Act.
- e. Requests received electronically are deemed received the next business day. A business day is defined as Monday through Friday, exclusive of holidays and institutional closure days.
- f. If a request is delivered to the FOIA Office junk mail folder, the request will be deemed received one business day after the FOIA Office becomes aware of the request. The FOIA Office will check the junk mail folder at least once per week.

## 2. Responses to FOIA requests to MSU

- a. MSU will respond to a FOIA request within five (5) business days of the FOIA Office receiving the request.
- b. A response will consist of one or more of the following:
  - i. A granting of the request
  - ii. A partial granting of the request, and a partial denial because some or a portion of the records do not exist, are not in the possession of MSU, and/or are exempt from disclosure
  - iii. A complete denial of the request because all of the records do not exist, are not in the possession of MSU, and/or are exempt from disclosure
  - iv. A notice that more time is needed to process the request
    1. If more time is needed, MSU will send out a follow up response within ten (10) business days of the initial response.
  - v. A notice that a fee deposit is required prior to further processing
    1. If a fee deposit is required, MSU will include in its response a non-binding, best efforts estimate regarding the time it will take to provide the records to the requester.
  - vi. A notice that the record(s) sought has (have) not been sufficiently described to enable MSU to locate the record(s).
- c. The response will state the FOIA exemptions under which any information and/or documents are withheld, if applicable.
- d. If any part of a request for records is denied for any reason, the response will set forth the procedures for challenging and/or appealing that denial.

## 3. Deposit Requirements

- a. A fee deposit will be required when the processing of a request will result in fees equal to or greater than \$50.00.<sup>3</sup>
- b. 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.
- c. If MSU requires a deposit, it will not process the FOIA request further until the deposit is paid.
- d. If, after receipt of the deposit and further processing of the request, MSU learns that the processing costs will be significantly different from the estimated costs, MSU will so notify the requester. Where the actual effort to search for, review and separate exempt material significantly exceeds the original estimate, MSU will notify the requester. The requester may choose to receive a revised fee deposit notice, or limit his/her original request to those records which may be processed within the time stated in the original fee estimate.
- e. A person who makes a FOIA request for which a deposit is required may withdraw that FOIA request without charge instead of paying the required deposit. Failure to pay the deposit will be deemed a withdrawal of the FOIA request.

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<sup>3</sup> MSU has determined, consistent with FOIA, that failure to charge fees in situations where the fees would be equal to or greater than \$50.00 would result in unreasonably high costs to the University.

- f. MSU will treat multiple concurrent FOIA requests on the same topic(s) and/or regarding the same recordkeeper(s) and from the same person as one FOIA request for purposes of determining whether the fee is below \$50.00.
- g. Where a requester who has not paid the final fee for the processing of an earlier request files a new request, MSU may require a deposit of all (100%) of the estimated fees for processing the subsequent request prior to processing the subsequent request.

#### 4. Calculation and Payment of Fees

- a. Fees are calculated by adding together the following costs<sup>4</sup>:
  - i. The labor costs<sup>5</sup> for searching for, locating, and examining responsive records
  - ii. The labor costs<sup>5</sup> for review, separation, and deletion of exempt information from non-exempt information
  - iii. The cost of non-paper physical media, if used
  - iv. The cost per copy of paper copies, not to exceed \$.10/page for standard 8 ½ x 11 inch paper
  - v. The labor costs<sup>5</sup> directly associated with duplication or publication, which may include copying to non-paper media
  - vi. The cost of mailing
- b. Final fees for responding to a FOIA request will be billed when MSU responds to the FOIA request. An invoice will be provided by MSU with the response. The amount invoiced must be paid within thirty (30) days.
- c. MSU reserves the right to require payment in full of all fees incurred in processing a FOIA request before delivering the final, responsive documents.
- d. MSU's decision to deny access to public records sought by a FOIA request because those records are, in whole or in part, exempt from disclosure does not excuse the person who files that FOIA request from payment of fees for the work undertaken by MSU in response to that request.
- e. MSU may waive or reduce the fees it is authorized to charge if it determines that a waiver or reduction of the fee is in the public interest because responding to the FOIA request can be considered as primarily benefiting the general public.
- f. Fee reductions or waivers are required in certain instances involving proven indigence or non-profit organizations. MSU will apply these reductions or waivers in accordance with the statute.

#### 5. Procedures for Challenge and Appeal

- a. If MSU denies a request in whole or in part, the requester may:
  - i. Submit an appeal to the President of MSU, in writing, via the FOIA Office, using the contact information listed in Item 1, above. The appeal must specifically use the word "appeal" and identify the reason(s) the requester seeks reversal of the denial. The President must respond to the appeal within ten (10) business days by doing one of the following:
    - 1. Reversing the FOIA Officer's decision
    - 2. Upholding the FOIA Officer's decision
    - 3. Reversing in part and upholding in part the FOIA Officer's decision
    - 4. Issuing a notice of extension for not more than ten (10) additional business days.
  - ii. Commence a civil action in the Court of Claims within one hundred eighty (180) days after the President's final determination to deny a request.
- b. If a requester believes that MSU 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.
- c. If a requester has questions regarding any FOIA response, including estimated fees or actual fees assessed, the requester should not hesitate to contact the FOIA Office by email (foia@msu.edu) or telephone (517/353-3929).

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<sup>4</sup> A copy of the standard form that MSU uses for fee itemization, with additional explanatory information, is attached to these Procedures and Guidelines.

<sup>5</sup> Labor costs will be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. The labor is charged at the hourly rate of the lowest paid MSU employee capable of doing the work, plus fringe benefits, if applicable. If it is not possible for the work to be done by an MSU employee, MSU will contract the work out and charge per the provisions of the statute.

**MSU FOIA FEE ESTIMATE ITEMIZATION FORM**

<i>Category of Costs/Description</i>	<i>Hourly Wage</i>	<i>Benefits % Multiplier Used*</i>	<i>Hourly Wage with Benefits</i>	<i>Estimated Time (Hours)</i>	<i>Amount</i>
<p><b>4 (1) (a) Searching for, locating and examining responsive records</b></p> <ul style="list-style-type: none"> <li>Charged at hourly wage of lowest-paid employee capable of searching for, locating and examining the public record, regardless of whether that person is available or who performs the labor</li> <li>Estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down</li> </ul>					
<p><b>4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information</b></p> <ul style="list-style-type: none"> <li>Charged at hourly wage of lowest-paid employee capable of separating and deleting exempt from nonexempt information, regardless of whether that person is available or who actually performs the labor</li> <li>If Public Body does not employ a person capable of separating exempt from nonexempt information, may treat contracted labor costs in the same manner as employee costs</li> <li>Contracted labor costs must clearly note the name of contracted person or firm on this itemization, and shall not exceed an amount equal to 6 times the state minimum hourly wage rate</li> <li>Labor costs under this subdivision estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down</li> <li>Shall not charge for labor under this section if Public Body knows or has reason to know that it previously redacted the public record in question, and the public record is still in the Public Body's possession</li> </ul>					
<p><b>4 (1) (c) Nonpaper physical media costs</b></p> <ul style="list-style-type: none"> <li>Actual and most reasonably economical cost of computer discs, computer tapes, or other digital or similar media</li> <li>Requestor may stipulate that records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies</li> <li>Does not apply if Public Body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated</li> </ul>					
<p><b>4 (1) (d) Cost of paper copies (not including labor)</b></p> <ul style="list-style-type: none"> <li>Calculated as total cost per sheet of paper, itemized to show cost per sheet and number of sheets provided</li> <li>Shall 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</li> <li>Shall utilize most economical means available, including double-sided printing, if cost saving and available</li> </ul>					
<p><b>4 (1) (e) Duplication or publication</b></p> <ul style="list-style-type: none"> <li>Includes making paper copies, making digital copies, or transferring digital public records to be given to requestor on nonpaper media or electronically</li> <li>Charged at hourly wage of lowest-paid employee capable of necessary duplication or publication, regardless of whether that person is available or who performs the labor</li> <li>Estimated and charged in time increments of the Public Body's choosing, with all partial time increments rounded down</li> </ul>					
<p><b>4 (1) (f) Cost of mailing</b></p> <ul style="list-style-type: none"> <li>Actual cost of mailing, for sending records in a reasonably economical and justifiable manner</li> <li>Shall not charge more for expedited shipping or insurance unless stipulated by requestor, may charge for least expensive form of postal delivery confirmation</li> </ul>					
<b>ESTIMATE TOTAL</b>					

\*The Public Body 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. 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 in this detailed itemization.

**MSU FOIA FINAL COSTS ITEMIZATION FORM**

<i>Category of Costs/Description</i>	<i>Hourly Wage</i>	<i>Benefits % Multiplier Used*</i>	<i>Hourly Wage with Benefits</i>	<i>Time (Hours)</i>	<i>Amount</i>
<p><b>4 (1) (a) Searching for, locating and examining responsive records</b></p> <ul style="list-style-type: none"> <li>Charged at hourly wage of lowest-paid employee capable of searching for, locating and examining the public record, regardless of whether that person is available or who performs the labor</li> <li>Estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down</li> </ul>					
<p><b>4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information</b></p> <ul style="list-style-type: none"> <li>Charged at hourly wage of lowest-paid employee capable of separating and deleting exempt from nonexempt information, regardless of whether that person is available or who actually performs the labor</li> <li>If Public Body does not employ a person capable of separating exempt from nonexempt information, may treat contracted labor costs in the same manner as employee costs</li> <li>Contracted labor costs must clearly note the name of contracted person or firm on this itemization, and shall not exceed an amount equal to 6 times the state minimum hourly wage rate</li> <li>Labor costs under this subdivision estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down</li> <li>Shall not charge for labor under this section if Public Body knows or has reason to know that it previously redacted the public record in question, and the public record is still in the Public Body's possession</li> </ul>					
<p><b>4 (1) (c) Nonpaper physical media costs</b></p> <ul style="list-style-type: none"> <li>Actual and most reasonably economical cost of computer discs, computer tapes, or other digital or similar media</li> <li>Requestor may stipulate that records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies</li> <li>Does not apply if Public Body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated</li> </ul>					
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<p><b>4 (1) (f) Cost of mailing</b></p> <ul style="list-style-type: none"> <li>Actual cost of mailing, for sending records in a reasonably economical and justifiable manner</li> <li>Shall not charge more for expedited shipping or insurance unless stipulated by requestor, may charge for least expensive form of postal delivery confirmation</li> </ul>					
<b>TOTAL FINAL COSTS</b>					
<b>LESS DEPOSIT RECEIVED</b>					
<b>BALANCE DUE</b>					

*\*The Public Body 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. 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 in this detailed itemization.*