

**CITY OF ALGONAC
FREEDOM OF INFORMATION REQUEST
APPROVED POLICY AND PROCEDURE MANUAL
DATED APRIL 21, 2015**

Procedures and Guidelines Regarding Freedom of Information Act and
Enhanced Access to Public Record Requests

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PROCEDURES AND GUIDELINES REGARDING THE MICHIGAN FREEDOM OF INFORMATION ACT, MCL SECTION 15.231 *et seq.*, AND ENHANCED ACCESS TO PUBLIC RECORD REQUESTS

A person has the right to submit a written request for public records from the City and its departments. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

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

The City of Algonac acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Algonac 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 Algonac will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Algonac's policy is to disclose public records consistent with and in compliance with State law.

A. Designated FOIA Coordinator

The City Clerk is the designated FOIA Coordinator, who will accept and disseminate all non-police written information requests as outlined in this policy. The City Clerk shall also accept all subpoenas for records and process the subpoenas in the same manner. The Clerk shall immediately forward the written request to the appropriate City Department and to the City Attorney.

The following officers shall be authorized to act as FOIA Coordinator designees: The Deputy City Clerk and the City Attorney.

The FOIA Coordinator and designees shall be responsible for accepting and processing requests for public records and issuing denials in accordance with the statute.

If the FOIA Coordinator is unavailable at the time a request is made, a copy of the request MUST be provided a FOIA Coordinator designee at the time the request is made.

The FOIA Coordinator shall also be responsible for keeping a copy of all written requests for one (1) year and one (1) day after the request is made. The FOIA Coordinator shall also be responsible for sending written notices of the ten (10) day extension of response time when a request cannot be completed within the allocated statutory time period.

B. Requester Responsibilities under FOIA

1. The requester of records must submit a written request for public records to the City on a form supplied by the City. All non-police department requests must be submitted to the FOIA Coordinator or her designee. The request must be made on the *Application for FOIA Request* form, available at City Hall or on the City's website. Once this form is received, the time permitted for response begins. All police department request must be submitted to the St. Clair County Sheriff's Department.

2. The written request must sufficiently describe the public record. The FOIA Coordinator or its designee may send a notice requesting clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request. However, the notice shall clearly state that the request was not spelled out in a precise manner and the City of Algonac will need clarification, at which time when it is received, the City will have an additional ten (10) days to complete its FOIA response.

3. The requester must clearly state the form of media in which they would like to receive their request. It can be in paper form, via electronic mail, or on a flash drive.

4. Updates and revisions to the requested information are not automatically supplied by the City of Algonac. A new written request must be made each time supplemental information is requested.

5. If a requester had previously requested information and failed either to pick it up or pay for it, pre-payment in full of all costs, including those

outstanding, shall be required before the City processes any additional requests.

6. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one (1) day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

7. If the requestor is currently serving a sentence of imprisonment he/she is not entitled to request information under the Freedom of Information Act.

C. City Responsibilities Under FOIA

1. The FOIA Coordinator or designees shall respond, in writing, to all written requests within five (5) business days as required by statute, unless a notice of extension has been sent.

2. If the requested information is available on the City of Algonac website, and the requester is able to access the website, the FOIA Coordinator or its designee shall inform the requester of this fact in lieu of providing the requested public records.

3. The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator, nor other City staff is obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

4. If a request indicates that the requester merely wishes to inspect public records, the FOIA Coordinator shall contact the requester to arrange for inspection at a reasonable time. Said inspection shall be conducted by the requesting person in the presence of an employee of the City of Algonac and under conditions the FOIA Coordinator or its designee might require.

5. If a request indicates that the requester wishes to have copies of a public records mailed, the FOIA Coordinator shall be responsible for providing

copies, subject to the payment of costs, as outlined in the fee schedule provided for this process.

6. If a request indicates that the requester wishes to have a certified copy of a public record, the FOIA Coordinator shall provide it, subject to the payment of costs, as outlined in the fee schedule provided below.

7. If a request is denied, the FOIA Coordinator or its designee shall issue a written notice denying the request. The notice shall explain why the requested public records are exempt from disclosure, or that the requested public records do not exist. If a request is made for a public record that contains information that is both exempt and non-exempt from disclosure by statute, then the FOIA Coordinator or its designees shall separate and redact the material in order to make the non-exempt material available for examination and/or copying. Additionally, the FOIA Coordinator or its designees shall generally describe the material that had to be separated and redacted, unless doing so would reveal the contents of the exempt information and thus, defeat the purpose of the exemption. The labor costs incurred in this procedure shall be treated in accordance with the cost provision set forth below.

8. The City of Algonac may provide enhanced access for the inspection, copying, or purchasing of select public records that are not confidential or otherwise exempt by law from disclosure. Enhanced access is defined as a public record's immediate availability for public inspection, purchase or copying by digital means. Enhanced access does not include the transfer of ownership of a public record, and the City of Algonac has a duty to ensure ownership of information products and City created intellectual property is protected and maintained.

9. Neither the City of Algonac, nor its FOIA Coordinator is obligated to create a record, list, compilation or summary of information that does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. In addition, the statute does not impose greater retention of public record responsibilities than what is required under other provision of the law and/or City Charter.

10. The City of Algonac will use its best efforts to respond to all requests made pursuant to FOIA; however, the City will search only the most likely

locations for responsive public records. The City is not required by statute to search each and every record it maintains in order to discover material that might pertain to a specific request.

D. Costs/Fees for Responding to FOIA Requests

Pursuant to statute, the City of Algonac is entitled to establish a policy seeking reimbursement to the City for the costs incurred in honoring FOIA requests. Due to the number of FOIA requests the City of Algonac receives, the implementation of a cost recovery policy is therefore necessary. The following costs incurred in responding to a FOIA request shall be chargeable to each FOIA requester:

1. Photocopying charges of .10 cents per page, or if the nature of the duplication necessitates duplication by outside sources, the actual cost of employing such outside sources.
2. Labor costs at the hourly wage of the lowest paid employee of the City capable of retrieving the information necessary to comply with the request incurred in duplication, mailing, search, examination, review and the deletion and separation of exempt and non-exempt information. The City shall specifically identify the nature of the costs.
3. Additional cost of up to 50% of the hourly wage rate of the employee capable of performing any task associated with this process may be charged to reflect fringe benefits paid to that employee.
3. Up to 50% of the actual costs of fringe benefits for the person whose hourly rate is being used as the basis for the charges of hourly rate for this purpose. Overtime costs will not be used in Calculation of fringe benefit charges.
4. Actual mailing costs.
5. Actual duplication costs for photographs, videotapes, tape cassettes, maps, plans, or microforms and any other type of medium requested.

6. If a person signs an Affidavit of Indigency, the first \$20.00 of the charge is waived. However, the requester is responsible for any cost that exceeds \$20.00. The requester is also responsible for paying for duplicate copies of requested information that has previously been provided to the requester.
7. If the total estimated cost of a request exceeds \$50.00, a deposit equal to one-half (1/2) of the total estimated cost may be requested prior to completing the request.
8. A requester must pay for a FOIA request within two (2) weeks. Unclaimed FOIA requests will be destroyed in thirty (30) days. The FOIA Coordinator or its designee shall affix a copy of the requester's check or money order and receipt to the original FOIA request.
9. The FOIA Coordinator may waive some or all of the costs of responding to a FOIA request if furnishing copies of the requested documents is considered primarily as benefiting the general public.
10. The City may, on occasion, need to hire an outside service to perform the separation and redaction of exempt information from non-exempt information if it does not have in its employ a person capable of such activity. The City may not charge more than an amount equal to six (6) times the state minimum hourly wage rate for such contractual services.
11. If the City of Algonac does not respond in a timely manner to a request, a reduction in the cost of the FOIA may be warranted in certain circumstances.

E. Costs for Responding to Enhanced Access Requests

Pursuant to statute, the City may establish a policy seeking reimbursement to the City for the costs incurred in responding to enhanced access requests, especially since these requests can result in an unusually high cost; therefore, the City will charge a reasonable fee to recover the costs of providing the

enhanced access information. The reasonable fee shall include, but is not limited to, the direct cost of creating, compiling, storing, maintaining, processing, upgrading, or enhancing information or data in a form available for enhanced access, including the pro-rated cost of computer hardware and software, system development, employee time, and any other actual costs incurred in supplying the information or record in the form requested by the purchaser. When calculating employee time, the actual wage, plus benefits, of the lowest paid employee capable of performing the responsibilities shall be used.

F. Deposits

The City of Algonac may request a good faith deposit before processing a FOIA request that is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request. The City is required to give its best good faith estimate of the fees that will be associated with the processing of the request.

If a request for public records is from a person who has not fully paid the City for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

The final fee for the prior written request is not more than 105% of the estimated fee;

the public records made available contained the information sought in the prior written request and remain in the City's possession;

the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;

ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pick-up or mailing;

the individual is unable to show proof of prior payment to the City; and

the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written requests' increased estimated fee deposit

The FOIA Coordinator will not require an increased estimated fee deposits if any of the following apply:

The person making the request is able to show proof of prior payment in full to the City;

the City is subsequently paid in full for the applicable prior written request; or

365 days have passed since the person made the request for which full payment was not remitted to the City.

G. Appeals

Appeal of Denial of a Public Record

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

1. The requester shall be provided written notice of the right and procedure for filing a written appeal to the City Manager.

2. The FOIA Coordinator shall refer, upon receipt, all written FOIA appeals to the City Manager. The City Manager shall then review any materials submitted by the appellant, any written comments received from the FOIA Coordinator or its designees, and any other information the City Manager deems necessary.

3. The City Manager has ten (10) days, absent compelling reasons for an extension of time, to issue a written notice to the appellant taking any of the following actions:

- a. Reversing the disclosure denial;
- b. Affirming the disclosure denial; or,
- c. Reversing the disclosure denial in part and affirming the denial in part.

Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee 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 to the Office of 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 ten business days after receiving the appeal, the City Manager will respond in writing by:

- Waiving the fee;
- Reduce the fee and issue a written determination indicating the specific Basis that supports the remaining fee, accompanied by a certification By the City Manager 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.
- Uphold 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 City Manager that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; an
- Issue a notice detailing the reasons for extending for not more than 10 business days the period during which the City Manager will responds to the written appeal.

Within 45 days after receiving notice of the City Manager's determination of a fee appeal, a requestor may commence a civil action in St. Clair County District 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 the 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.

H. Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modification and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

I. Penalty for Violation of the Act

If the court determines in either an appeal of a denial of a public record, or the appeal of an excessive fee, that the public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, then in addition

to any other award or sanction, the court shall impose a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence.

The court is required to consider the budget of the public body and whether the public body has been previously assisted penalties for violations of the FOIA.

The civil fine is to be deposited to the general fund of the State Treasury.

CERTIFICATION

The FOREGOING is a true and complete copy of Algonac City Council Order 04-20-15, adopted by the City Council of the City of Algonac, County of St. Clair, State of Michigan, at a regular meeting of the City Council held on April 21st, 2015 and public notice of said meeting was given pursuant to and in accordance with the requirements of Act No. 267 of the Public Acts of 1976, as amended, being the Open Meetings Act; and the Minutes of said meeting have been or will be available as required by said Act.

Members Present: Bembas, Nugent, Thompson, Tuzinowski

Members Absent: Bird, Martin, Meldrum


CO# 04-20-15 Review and Approval of F.O.I.A. Policy

Motion by Tuzinowski supported by Nugent to approve the Freedom of Information Act Policy as presented. Motion Carried.

Members Voting Yes: Tuzinowski, Nugent, Bembas, Thompson

Members Voting No: None

This Council Order was declared adopted by the Mayor and has been recorded in the minute book.


Cynthia L. Greenia, City Clerk
City of Algonac

Adopted: April 21, 2015