

DETROIT BUILDING AUTHORITY

PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

Under the Michigan Freedom of Information Act (the “Act” or “FOIA”), MCL 15.231 et seq., all persons, except those who are incarcerated, can submit a FOIA request to the Detroit Building Authority (“DBA”) FOIA Coordinator.

In accordance with Section 4(4) of the Act, MCL 15.234(4), the following is the Written Public Summary of the DBA’s FOIA Procedures and Guidelines:

FOIA REQUEST

A FOIA request is a legal process, by which a person can submit a written request to the FOIA Coordinator to access, review, or obtain a copy of a public record.

1. Not every record request should be made into a FOIA request:

- If there is a pending lawsuit, the records can be obtained through a subpoena or through a discovery request in the underlying lawsuit.

2. The following requests are NOT FOIA requests:

- Request to draft or to create a document where none exists is not a FOIA request.
- Request to provide a narrative explanation for a certain incident or situation is not a FOIA request.
- Request to answer question(s) is not a FOIA request.
- Request to complete a form or a survey is not a FOIA request.
- Request to preserve evidence is not a FOIA request.

PUBLIC RECORD

Section 2(e) of the Act, MCL 15.232(e), defines “**public record**” 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.”

Pursuant to the Act, the DBA is a public body. Therefore, all records that are prepared, owned, used, in the possession of, or retained by the DBA in its official capacity are public records.

Does this mean that all records prepared, owned, used, in the possession of, or retained by the DBA must be disclosed or released to those who request such information or record under the Act?

No.

Although all public records of the DBA are subject to disclosure pursuant to the Act, certain information or records may be exempt from disclosure under the Act or by another state or federal statute.

1. Section 13 of the Act, MCL 15.243, provides a list of information and records that may be exempt from disclosure under the Act.

Therefore, if any individual seeks information or records that fall under one or more of the listed exemptions, the DBA may deny a portion of or the entire FOIA request. However, when doing so, the DBA must identify the exemption under the Act to the individual who is seeking that information/record; and provide a written explanation why the exemption applies in that particular instance.

2. In addition to the above-referenced exemptions under the Act, there are federal and state laws which preclude the DBA from disclosing specific information or records under those laws.

For example, pursuant to the Michigan Tax Code, income tax information collected and maintained by the DBA is not subject to disclosure under FOIA. Likewise, there are many state and federal laws which preclude the DBA from disclosing certain information. Examples include: Michigan Crime Victim's Rights Act, Michigan Crime Stoppers Act, federal Privacy Act, HIPAA, laws pertaining to sexually motivated crimes and juvenile offenses, child protection, and public employee retirement system investments.

Therefore, under these laws, the release of certain information by a public body employee would result in the violation of federal or state law. In some instances, the release or the disclosure of the lawfully precluded information or record can result in a criminal misdemeanor by the public employee who releases the information/record; and the employee's action may be punishable by imprisonment or by payment of a fine.

RECORDS REQUESTS

1. All FOIA requests will be handled by the DBA FOIA Coordinator.
2. When submitting a FOIA request, you must sufficiently describe a public record so as to enable DBA personnel to find the record(s).
 - Therefore, your FOIA request must contain the following information:

- A comprehensive description of the document you are seeking; and
 - Time frame and/or date(s), if appropriate
- Please try to avoid “any and all”. If your request is too broad, personnel from the DBA who will be searching and retrieving the record(s) will most likely encounter difficulties in locating the record(s).
 - If the scope of your request is too broad for DBA personnel to locate the requested records, your request may be denied or you may be required to make a deposit payment.
 - The more descriptive and specific your request is, the easier it will be for DBA personnel to search for and to retrieve the requested record(s).
3. Your request should include the word “FOIA” or “FOIA Request”.

No specific form is required to submit a FOIA request to the DBA.

HOW YOUR FOIA REQUEST IS HANDLED BY THE DBA

FOIA requests will be handled by the DBA’s FOIA Coordinator. The FOIA Coordinator will then forward a copy of the request to the appropriate individual employees of the DBA who would most likely have or know the whereabouts of the requested record.

That employee will then exercise his/her due diligence in searching for the requested record(s) from all the reasonable places and will:

- Inform the FOIA Coordinator that the DBA does not possess the requested record; or
- Provide a complete copy of the requested record(s) to the FOIA Coordinator; and
- If appropriate, the employee will provide the information required to prepare an estimate of the labor costs to be incurred by the DBA as calculated under the Act.

The FOIA Coordinator will then either forward the no record statement or the requested record(s) and, if appropriate, information required to assess the labor costs for that particular FOIA request, to the DBA’s attorneys.

The DBA’s attorneys will review the records:

- To make a determination whether there is any applicable exemption under Section 13 of the Act, MCL 15.243; and/or

- To make a determination whether there is any federal or state statute which would preclude the DBA from disclosing the requested record.

If necessary, the attorneys will separate the exempt from the non-exempt information in the record, by either redacting the information or by withholding certain document(s).

Where appropriate, the attorneys will: 1) keep track of the time spent in separating the exempt from the non-exempt information; and 2) the DBA may charge the attorneys' labor costs to the person who submitted the request in accordance with the Act.

RESPONSES TO YOUR FOIA REQUESTS

Within five (5) business days of the receipt of the FOIA request by the DBA's FOIA Coordinator, the DBA (through the DBA's FOIA Coordinator or the DBA's attorneys), shall provide a written response to the person who submitted the FOIA request by:

1. Extending the DBA's time to respond to the request.

- If the request was received by facsimile or email, the request is deemed to have been received by the DBA's FOIA Coordinator on the next business day.
- Saturdays, Sundays and holidays are not considered business days.
- If the requested record is not readily accessible, the DBA may extend its time to respond by an additional ten (10) business days.

2. Requesting a deposit payment.

- If the cost of processing the request is expected to exceed \$50, or if you have not paid for a FOIA request which was previously submitted, the DBA will require a deposit payment before processing the FOIA request.
- The requested deposit payment will be 50% of the estimated cost determined by the DBA. The estimated cost will consist of: 1) an estimated number of hours it will take DBA personnel to search and retrieve the requested records and, where appropriate, the number of hours it will take the DBA's attorneys to review and to separate the exempt from the non-exempt information; and 2) the hourly wage rate of the lowest paid DBA employee who is capable of performing the task as required under the Act.
- In accordance with the Act, the hourly labor rate will include the employee's base salary and fringe benefits.

- The DBA will inform the person who made the request of the right to appeal or file a lawsuit pertaining to the requested deposit payment.

3. Granting the request.

- Make the requested record available for review, pickup, or delivery via email or First Class Mail.
- If appropriate, the DBA may request payment for the records and/or the labor costs incurred by the DBA in accordance with the Act. The response letter will provide a page count or an estimated page count; itemize the time spent by DBA personnel who searched and retrieved the requested records; the hourly wage rate of the lowest paid DBA employee who was capable of performing the task; and itemize the time spent by the DBA's attorneys who reviewed the records for any applicable exemptions under the Act and any other federal or state law.
- If seeking labor costs, the DBA will inform the person who made the request of the right to appeal or file a lawsuit pertaining to the requested labor costs.

4. Granting in part and denying in part the request.

- Identify what part of the request is being granted and provide a page count.
- Identify what part of the request is being denied, identify all of the relevant exemptions, include a description of document(s) that are being withheld from disclosure.
- If part of the denial is based on "no record", the response letter will serve as a certificate of no record based on information provided by the DBA's personnel or FOIA Coordinator.
- If appropriate, the DBA may request payment for the records and/or the labor costs incurred by the DBA in accordance with the Act. The response letter will provide a page count; itemize the time spent by the DBA personnel that searched and retrieved the requested records; the hourly wage rate of the lowest paid employee of the DBA who was capable of performing the task; itemize the time spent by the DBA's attorneys who reviewed the records for any applicable exemptions under the Act and any other federal or state law; and the time the DBA's attorneys spent in separating the exempt from the non-exempt information.
- Inform the person who made the request of the right to appeal or file a lawsuit pertaining to the requested labor costs or the portion of the request which is denied.

5. Denying the request.

- Identify the reason for the denial in accordance with the Act.

- If the denial is based on “no record”, the response letter will serve as a certificate of no record which would verify that the DBA’s personnel or FOIA Coordinator informed the DBA’s attorneys that the DBA did not possess the requested record.
- Inform the person who made the request of the right to appeal or file a lawsuit pertaining to the denial of the request.

HOW TO SUBMIT A FOIA REQUEST

1. You may **hand-deliver** or **mail** your written request to:

Detroit Building Authority
FOIA Coordinator
1301 Third Street, Suite 328
Detroit, Michigan 48226

2. Your written request can also be **faxed** or **emailed** to:

Detroit Building Authority
FOIA Coordinator
(313) 224-4998

DEPOSIT PAYMENTS, CALCULATION OF FOIA LABOR COSTS AND/OR FEES

1. All deposit payment must be submitted by check or money order made payable to the “Detroit Building Authority” in the specific amount requested in the DBA’s response, within the time frame specified by the DBA.
2. Unless otherwise directed under the Act, if the DBA receives a request from a person who has not paid the DBA for copies of records which were made available for the person in his/her previously submitted FOIA request, the DBA may require a deposit of 100% of the estimated labor costs and duplication fees before the DBA begins processing a new FOIA request from that person.
3. All labor costs requested by the DBA must be submitted in check or money order made payable to the “Detroit Building Authority” in the specific amount requested in the response by the DBA prior to making the records accessible to the person who submitted the FOIA request.
4. In accordance with the Act, a hard copy in black and white 8.5” x 11” or 8.5” x 14” paper format will be made available at \$0.10 per page.

5. Hard copies of irregular-sized records can also be made available at cost.
6. A color copy of the record in 8.5" x 11" or 8.5" x 14" paper format, if available, can be made available at cost.
7. The DBA may charge labor and material costs if appropriate under the Act and in the manner required by the Act. The following may be included:
 - a) Labor costs associated with searching, locating and examining the requested record, when failure to do so will result in unreasonably high costs to the DBA.
 - b) Labor costs associated with reviewing the record to separate the exempt from the non-exempt information, when failure to do so will result in unreasonably high costs to the DBA. If labor costs are incurred by a contractor, they shall not exceed an amount equal to 6 times the State minimum hourly wage.
 - c) The cost of computer discs, computer tapes, other digital or similar media when the request is for non-paper physical media.
 - d) Labor costs associated with copying or duplication, which includes making paper copies, digital copies, or transferring digital records to non-paper physical media or through the Internet.
 - e) The cost of labor directly associated with duplication or publication, including making paper copies, digital copies, or transferring digital records on non-paper media or through the Internet or other electronic means.

FOIA APPEAL or FOIA LAWSUIT BASE ON A DENIAL OR A PARTIAL DENIAL OF A FOIA REQUEST

If the DBA denies all or a portion of the FOIA request, the requesting person may do one of the following:

1. Submit a written appeal to the head of the public body.

In the DBA, FOIA appeals are handled directly by the DBA's Director. Therefore, should you choose to appeal the denial, your appeal must:

- a) Be in writing;
- b) State the word "APPEAL" where it is clearly visible;
- c) Identify the reason or reasons for reversal of the denial; and
- d) Be directed to:

Detroit Building Authority
Attention: Director
1301 Third Street, Suite 328
Detroit, Michigan 48226.

Within 10 business days after receiving a written appeal, the Director shall do one of the following:

- Reverse the denial;
 - Issue a written notice/letter to the requesting person upholding the denial;
 - Reverse the denial in part and issue a written notice/letter to the requesting person upholding the partial denial;
 - Under unusual circumstances, issue a notice/letter extending the DBA's time to respond not more than 10 business days. An extension letter for a FOIA appeal may be issued by the DBA's attorneys.
2. Commence an action in the Wayne County Circuit Court within 180 days after the DBA's denial.

FOIA APPEAL or FOIA LAWSUIT BASED ON A DISPUTE OVER FEES OR LABOR COSTS

If you are disputing the DBA's request for fees or labor costs associated with your FOIA request, including the DBA's request that you submit a deposit payment, you may do one/ of the following:

1. Submit a written appeal to the Director of the DBA.
 - A. FOIA appeals submitted to the DBA are handled directly by the DBA's Director. Therefore, should you choose to appeal the fees or costs requested by the DBA, your appeal must:
 - a) Be in writing;
 - b) State the word "APPEAL" where it is clearly visible;
 - c) Identify how the fee, including the deposit payment, that is required by the DBA, exceeds the amount permitted under the Act; and
 - d) Be directed to:

Detroit Building Authority
Attention: Director
1301 Third Street, Suite 328
Detroit, Michigan 48226

- B. Within 10 business days after receiving a written appeal, the Director shall do one of the following:

- a) Waive the fee;
 - b) Reduce the fee and provide a written determination supporting the reduction;
 - c) Uphold the fee and provide a written determination supporting the decision.
 - d) Issue a written notice/letter to the requesting person upholding the denial;
or
 - e) Issue a notice/letter extending the DBA's time to respond not more than 10 business days with an explanation why an extension is needed.
2. You may commence a FOIA lawsuit against the DBA in Wayne County Circuit Court within 45 days after:
- a) Receiving the notice of the required fee;
 - b) Receiving no response from the DBA on your fee/costs appeal; or
 - c) Receiving a determination of your fee/costs appeal from the DBA.