



**CITY OF BATTLE CREEK  
FREEDOM OF INFORMATION ACT (FOIA) POLICY**

The following policy was established pursuant to Resolution No.\_\_\_\_, adopted by the City Commission of the City of Battle Creek on \_\_\_\_\_, 2000. The policy identifies the procedures that the Battle Creek FOIA Coordinator, or his/her designee, 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 City Clerk, as designated by the City Commission, is responsible for accepting and processing requests for public records as outlined in this policy and the Act, is responsible for approving denials of requests, and those persons designated by the City Clerk as provided by the Act.
- Person: An individual, corporation, limited liability company, partnership, firm, Organization, association, governmental entity, or legal entity.
- City: The City of Battle Creek and its duly constituted departments, commissions, boards or committees.
- Public Record: A writing which is 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 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 records and/or the need to collect public records 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 RECORDS**

A person has the right to public record(s) from the City. The request must be in writing and sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

A person has the right to inspect a public record, or receive copies of requested record, unless exempted by law or court order. Upon written request, a person will be provided with a reasonable opportunity to examine the public records provided by the public body. Persons with special needs should contact the FOIA Coordinator to insure that arrangements for special needs or reasonable facilities are prepared. The City shall protect public records from loss, unauthorized alteration, mutilation, or destruction. A person may request that copies of a public record be provided subject to the payment of fees outlined in Section 4.

A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid up to six months, at the request of the subscriber, and shall be renewable.

## **SECTION 3 - RIGHTS AND OBLIGATIONS OF THE CITY**

The FOIA Coordinator will provide a certified copy of a public record if a person so requests in writing.

The Act does not require the City or the FOIA Coordinator to make a compilation, summary, report of information, or create a new public record. This exemption includes analyzing, compiling, or summarizing existing information into a new format. Neither the City nor the FOIA Coordinator are obligated to provide answers to oral or written questions.

The FOIA Coordinator shall keep a copy of all written requests on file for no less than one year.

## **SECTION 4 - PROVISIONS FOR COPYING PUBLIC RECORDS**

All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the Battle Creek City Commission in the "Fee, Bond and Insurance Schedule." Fees shall be limited to actual mailing costs and to the actual incremental cost of duplication or publications including labor, the cost of the search, examination, review, and the deletion and separation of exempt from nonexempt information.

The FOIA Coordinator may charge a fee for the labor involved with searching for, examining, and reviewing a public record as permitted by the Act. Where total fees and charges are reasonably anticipated to exceed Fifty Dollars (\$50.00), the City requires 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 documents. The FOIA Coordinator will not charge additional fees for certification of any copies. Charges for labor costs will be determined by using the wages of the lowest, paid, full-time public body employee capable of retrieving the requested information.

A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as a primarily benefiting the general public.

A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by 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 inability to pay the cost because of indigency. The affidavit must be sworn to under penalty of perjury and/or notarized.

## **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 after its receipt. A written request made by facsimile, electronic mail, or other electronic transmission is not considered received by a public body's FOIA Coordinator until one (1) business day after the electronic transmission is made. The FOIA Coordinator will then process the request 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 during normal office hours.

If the request generates fees of \$50 or less, the FOIA Coordinator will forward notification to the requester indicating the amount due and where the documents may be released.

If the request generates fees of \$50 or more, the FOIA Coordinator will require fifty percent of the estimated charges be paid in advance of the performance of the work. The balance must be paid prior to release of documents.

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

- a) an explanation as to why the requested public record is exempt from disclosure in accordance with the Act, or
- b) an explanation that the requested public record does not exist, or
- c) an explanation or general description of information which had to be separated or deleted from the public record.

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 Commission 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 shall 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.

Where a written request is received which does not sufficiently describe the public records requested so as to enable the FOIA Coordinator to locate the same, the FOIA Coordinator will notify the requester for a clarification. 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 includes 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 nonexempt 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.

### SECTION 7 - DESIGNATION OF FOIA COORDINATOR

Resolution No. 409 dated October 7, 1997, authorized Deborah G. Owens, City Clerk, to be designated as the FOIA Coordinator. In addition, the following shall be authorized to act as Co-Coordinators: Deidre Laser, Deputy Clerk; Jackie Hampton, Lieutenant; Ray Felix, Detective Sergeant; and Carter Bright, Detective Sergeant. The FOIA Coordinator and Co-Coordinators shall be responsible to accept and process requests for public records and approve denials in accordance with Sections 5(4) and (5) of the Act.

### 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 on 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 Commission which shall specifically state the word "appeal" and identify the reason(s) for reversal of the denial.
- 2) When a written appeal is received by the City in accordance with the Act, the Battle Creek City Commission shall do one of the following:
  - a) place the appeal on the agenda for the next regularly scheduled meeting, or
  - b) consider and decide the appeal at the meeting at which it was received, or
  - c) direct that a special meeting be scheduled to consider the appeal.
- 3) In its consideration of any appeal, the City Commission shall review the materials submitted by the appellant, any written comments received from the FOIA Coordinator, any other information as the City Commission deems necessary and within ten (10) days after receiving the appeal, take one of the following actions:
  - a) reverse the disclosure denial, or
  - b) issue a written notice to the requesting person affirming the disclosure denial, or
  - c) reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.
  - d) under unusual circumstances issue a notice extending for not more than ten (10) business days the period during which the City Commission will respond to the appeal.
- 4) The appellant may choose to commence an action in the Circuit Court to compel the public body's disclosure of the public records within 180 days after the City's determination to deny a request.