



# **CITY OF BATTLE CREEK**

## **FREEDOM OF INFORMATION ACT POLICY**

### **Section 1: Purpose**

The City of Battle Creek's (the "City") policy is to comply with the Michigan Freedom of Information Act ("FOIA") regarding FOIA requests. Public records shall be disclosed in compliance with State law.

### **Section 2: General Policies**

The City Commission, acting pursuant to MCL 15.236(1) designates the City Manager as FOIA Coordinator for the City. The City Manager may designate other City staff to act on their behalf, accept and process written requests for the City's public records, and approve or deny requests. A person may submit, to the FOIA Coordinator or their designee, a written request that sufficiently describes a public record to enable the City to find the public record. The requestor may inspect, copy, or receive copies of the requested record(s) and, upon request, receive a certified copy of the public record(s). The City is not obligated to create new public records or make a compilation, summary, or report of information which does not already exist. The FOIA Coordinator or their designee and City staff are not obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves. A copy of all written requests for public records received by the City will be maintained for a period of at least one year. Persons incarcerated in a local, state, or federal correctional facility are not entitled to submit a request for a public record under FOIA.

### **Section 3: Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City in its performance of an official function must do so in a "writing" as defined by MCL 15.232(l). The request must be submitted in person; by mail; or via facsimile, electronic mail, or other electronic means. The City has a designated online portal that it encourages requestors to use. A request must include the submitter's complete name, address, and contact information (i.e., valid telephone number and/or electronic mail address) unless the requestor is an indigent person who has filed an affidavit declaring their indigence.

A request must sufficiently describe a public record so as to enable City staff to identify and find the public record. A requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to them. Additional FOIA fees may be collected in conjunction with providing nonpaper physical media. A person who makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website where the information is located. A person may subscribe to future issues of public records issued by the City on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

### **Section 4: Processing a Public Record Request**

Any City employee who receives a request for a public record shall promptly forward that request to the FOIA Coordinator or their designee and make the requestor aware of the City's FOIA request portal. A request received by facsimile or e-mail is deemed received 1 business day after the electronic transmission was made. A request sent by e-mail and delivered to a City spam or junk-mail folder is deemed received 1 business day after the FOIA Coordinator or their designee first becomes aware of the request. A record



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of the date the request was delivered to the spam or junk-mail folder and the date the City became aware of the request will be maintained. Each requestor shall be provided with a website where these Procedures and Guidelines are available on the City's website with the City's response. A copy of these Procedures and Guidelines shall be made available to individuals who request them either by written request or upon request by visitors at the public body's office.

Unless otherwise agreed to in writing by the requestor, the City will respond to a FOIA request within 5 business days of receipt by (a) granting the request; (b) issuing a written notice denying the request; (c) Granting the request in part and issuing a written notice denying in part; (d) issuing a written notice extending the period the public body shall respond to a request by 10 business days, or (e) issuing a written notice indicating that the public record requested is available at no charge on the City's website. The City shall provide reasonable facilities and opportunities for requestors to examine and inspect non-exempt public records during normal business hours.

If the request is denied or denied in part, the City will issue a Notice of Denial, signed by the FOIA Coordinator or their designee, which shall provide: (a) an explanation as to why a requested public record is exempt from disclosure; or (b) a certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or (c) an explanation or description of the public record or information within a public record that is separated or deleted from the public record. It shall also provide, regardless of which explanation or certificate is granted above (a) an explanation of the person's right to submit an appeal of the denial to the City Commission or to seek judicial review of the denial in the Calhoun County Circuit Court as allowed under law; and (b) an explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.

#### **Section 5: Fees Related to a Public Record Request**

The City will charge fees as allowed by State law for a public record search. The FOIA Coordinator or their designee shall provide a requestor a completed FOIA Fee Itemization Schedule ("Fee Schedule") with its determination. Before a final determination is made regarding a request, the FOIA Coordinator or their designee will require that payment either (1) be made in full or (2) a deposit based on the City's good-faith fee estimate be paid. The completed Fee Schedule will contain a good-faith, nonbinding estimate of the costs expected to be incurred as part of the request; a detailed breakdown of the costs associated with the good-faith estimate; a good-faith estimate of the timeframe in which the City will provide public records to the requestor; and a website link to these Procedures and Guidelines.

#### **Section 6: Calculation of Fees**

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City and the City specifically identifies the nature of the unreasonably high costs to the Requestor, including but not limited to: (a) volume of the public record(s) requested; (b) amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested; (c) whether public records from more than one City department or various City offices are necessary; (d) Any other factors identified by the FOIA Coordinator in responding to the particular request. The City may charge for the following costs: (a) labor costs directly associated with locating, examining, and



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reviewing a requested public record; (b) labor costs directly associated with a review of a record which is disclosed to separate and delete information exempt from disclosure; (c) the actual cost of computer discs, computer tapes or other digital or similar media; (d) the cost of duplication or publication, not including labor, of paper copies of public records; (e) labor costs directly associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means; or (f) the actual cost of mailing or sending a public record.

Labor costs are calculated based on the following: (a) labor costs directly associated with necessary searching for, locating, and examining records, as well as the separating and deleting of exempt information from nonexempt information will be estimated and charged in 15 minute increments with all partial time increments rounded down; (b) the hourly wage of the lowest-paid City employee capable of performing the work to process a FOIA request, regardless of who actually performs work, will be used as the basis for Labor costs. Labor costs may include multiple hourly rates dependent upon the nature of a specific request; (c) labor costs will also include a charge to cover or partially cover the cost of fringe benefits, up to 50% of the applicable labor charge or the actual cost of fringe benefits. Overtime wages will not be included in labor costs unless stipulated to by the requestor and clearly noted in the fee itemization; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media is based on the actual cost of such media used in completing the request. In order to ensure the integrity of the City's technological infrastructure, the City will not accept non-paper media from the requestor. The cost to provide paper copies of records is calculated based on the cost of standard letter (8½ x 11) or legal (8½ x 14) sized paper, not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction. The cost to mail records to a requestor is calculated based on the actual cost of mailing for sending the public records using the least expensive form of postal delivery and shall not charge more for expedited shipping or insurance unless the requestor stipulates to using this mailing method.

If the City does not timely respond to a written request, the City shall reduce the labor costs by 5% for each day the City exceeds the time permitted up to a 50%, if the late response was willful and intentional; the written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information, or included the words, characters, or abbreviations for "freedom of information", "information", "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15.231 *et seq* or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page. The reduction shall be noted on the Fee Schedule provided.

#### **Section 7: Fee Deposits**

If the cost of processing a FOIA request is estimated to exceed \$50, the City shall require a good-faith deposit from the requestor before making a final determination on the request. This deposit shall total no more than 50% of the estimated fee amount. If a request for public records is from a requestor who has not fully paid the City for a previously granted written request, a deposit of 100% of the estimated fee will be required before beginning a public records search for any subsequent written request by that requestor if the following conditions exist: (a) the final fee for the prior written request is not more than 105% of the estimated fee; (b) the public records made available contained the information sought in the prior written request and remain in the City's possession; (c) the public records were made available to the



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individual, subject to payment, within the time frame estimated by the City to provide the records; (d) 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing; (e) the individual is unable to show proof of prior payment to the City; and (f) the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit. An increased estimated fee deposit will not be required if any of the following apply: (a) the requestor shows proof of prior payment in full to the City; (b) the City is subsequently paid in full for the prior written request; or (c) 365 days have passed since the person made the request that was not fully paid.

### **Section 8: Waiver of Fees**

The first \$20.00 of the processing fee for a request will be waived if a requestor submits an affidavit stating that they are indigent and receiving specific public assistance or otherwise states facts demonstrating an inability to pay because of indigency. An individual is not eligible to receive the waiver if: (a) the requestor has previously received discounted copies of public records from the City twice during the calendar year; or (b) the requestor requests information in connection with other persons who are offering or providing payment or other remuneration to make the request.

The FOIA Coordinator will waive the fee for a nonprofit organization designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements: (a) is made directly on behalf of the organization or its clients; (b) is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and (c) the request is accompanied by documentation of nonprofit designation by the State of Michigan.

### **Section 9: Appeal of a Denial of a Public Record Request**

If the City makes a final determination to deny all or a portion of a request, the requestor may: (a) submit to the City Commission a written appeal that specifically states the word "appeal" and identifies the reason(s) the denial should be reversed; or (b) commence a civil action in the Calhoun County Circuit Court to compel the City's disclosure of the public records **within 180 days after the City's final determination to deny a request**, whether or not the requestor submitted an appeal to the City Commission. Within 10 business days of receiving the appeal (considered received at the first regularly scheduled meeting following submission) the City Commission will respond in writing by: (a) reversing the disclosure denial; (b) upholding the disclosure denial; (c) reversing the disclosure denial in part and upholding the disclosure denial in part; or (d) under unusual circumstances as defined by MCL 15.232(k), issuing a notice extended for not more than 10 business days during the period which the City Commission shall respond. The City Commission may issue only one notice of extension for a written appeal.

If the court determines that the public record is not exempt, the court shall order the City to cease withholding or to produce all or a portion of the public record wrongfully withheld. If a requestor asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails, the court shall award reasonable attorneys' fees, costs, and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements. If the court determines that the City arbitrarily and capriciously



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violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000 and shall also order that the public body pay a civil fine of \$1,000 to the general fund of the State treasury.

### **Section 10: Appeal of a Fee in Excess of Permitted Amount**

If the City requires a fee that exceeds the amount permitted under its publicly available Fee Schedule, these Procedures and Guidelines, or State law the requestor may submit a written appeal for a fee reduction to the City Commission. The appeal must be in writing, specifically state the word "appeal," and identify how the required fee exceeds the amount permitted. Within 10 business days after receiving the appeal (considered received at the first regularly scheduled meeting following submission), the City Commission will respond in writing by: (a) waiving the fee; (b) reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the City Commission 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; (c) upholding the fee and issuing 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 Commission that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or (d) issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Commission will respond to the written appeal.

Not later than 45 days after receiving notice of the City Commission's determination of a fee appeal, a requestor may commence a civil action in Calhoun County Circuit 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 an appropriate portion of reasonable attorneys' fees, costs and disbursements. If the court determines that City has acted arbitrarily and capriciously by charging an excessive fee, it shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award the appellant punitive damages in the amount of \$500 in addition to any actual or compensatory damages.

### **Section 11: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previously promulgated FOIA policies these Procedures and Guidelines control. To the extent that any administrative rule promulgated by the FOIA Coordinator or their designee subsequent to the adoption of this resolution is found to be in conflict with any previously promulgated policy, the administrative rule promulgated by the FOIA Coordinator or their designee is controlling. To the extent that any provision of these Procedures and Guidelines or any administrative rule 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 adopt such administrative rules as the FOIA Coordinator 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 modifications and rules are consistent with State law.

These FOIA Policies and Guidelines become effective December 17, 2024.



# City of Battle Creek FOIA Fee Schedule

REQUESTOR'S NAME:		
ADDRESS:		
EMAIL/PHONE:		
FEE CALCULATION		AMOUNT
<b>A – FEE FOR RECORDS SET BY STATUTE:</b>		\$ _____
<b>B – PUBLIC RECORDS SEARCH, DUPLICATION, REVIEW, AND REDACTION</b>		
1. Labor costs <sup>1</sup> to search & locate: _____ Hours x \$_____ (hourly wage) x _____% (fringe benefit multiplier, not to exceed 50% or actual cost of fringe benefits)	\$ _____	
2. Labor costs <sup>1</sup> for review and redaction: _____ Hours x \$_____ (hourly wage) x _____% (fringe benefit multiplier, not to exceed 50% or actual cost of fringe benefits)	\$ _____	
3. Non-paper physical media: \$_____ x Number Used _____ = \$_____	\$ _____	
4. Duplication and publication: \$_____ (cost per page) x _____ number of pages	\$ _____	
5. Labor costs <sup>1</sup> to duplicate or publish: _____ Hours x \$_____ (hourly wage) x _____% (fringe benefit multiplier, not to exceed 50% or actual cost of fringe benefits)	\$ _____	
6. Mailing (Actual Costs):	\$ _____	
Less waiver for indigent persons: (\$20.00) <sup>2</sup> or reduction for untimely response: \$_____ subtotal x 5% reduction per day x _____ days	\$ _____	
• The total fee and deposit are good-faith estimates, and final costs may vary. • If the total fee is more than \$50.00, you must pay a deposit of one-half of the total fee. • You must pay the requested Deposit or Balance before a final determination can be made.	Total Fee: \$ _____	
	Deposit: \$ _____	

**The search, review, and/or redaction of public records requested pursuant to the FOIA constitutes an unreasonably high cost to the City of Battle Creek in this instance due to the following:**

- **volume of the public record(s) requested**
- **amount of time spent to search for, examine, review and redact records**
- **public records from more than one City department or offices are necessary**
- **other:**

**The following documents are available online but may be produced for an additional charge:**

<sup>1</sup> Labor costs are calculated using the lowest paid Department employee capable of performing each task. Each Department labor cost shall be listed separately, as applicable. Labor costs are charged in 15-minute increments, with partial time rounded down.

<sup>2</sup> You must submit an Affidavit of Indigency to qualify for this fee waiver. Limited to two waivers per calendar year.