

Summary of Changes to Michigan FOIA Law Effective July 1st, 2015

Mailing

The township may charge the actual cost of mailing of materials requested under FOIA.

Wage Calculation

The township must use the hourly wage of the lowest paid employee capable of doing the work, regardless if that employee is available or does the work.

The township cannot charge overtime wages unless stipulated by the requestor and clearly noted on the detailed itemization.

The township may charge up to an additional 50% of the actual labor costs to cover benefits if the township clearly notes the percentage multiplier used in the detailed itemization. The township cannot charge more than the actual cost of fringe benefits.

The township must charge in 15 minutes increments and rounded down (except for paper copies).

Fees

A fee (as described in subsection (1) of the new FOIA act, which includes pretty much every fee) shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

The township does not have to charge a fee if it deems the request to be in the public interest.

If an item is posted on our webpage it must be provided free of charge. If the person fulfilling the requests knows or has reason to know its available on the webpage they have to advise the requestor in a written response. It also has to include the web address. If the person still wants a physical copy (paper or disc) the township must provide it.

Discounted Fees

A person cannot be charged for the first \$20 if the person presents an affidavit that they are indigent and receiving public assistance or, if not receiving public assistance, a statement of facts showing their inability to pay.

The discount shall be fully noted in the detailed itemization.

A person is ineligible for this discount if they have previously received discounted copies of public records from the township twice in a calendar year or if the request is made in conjunction with outside parties who are offering or providing payment for the individual to make the request.

Summary of Changes to Michigan FOIA Law Effective July 1st, 2015

If the township deems the requester ineligible for discounted fees we are required to inform the requester specifically of the reason for ineligibility in our written response.

Nonpaper Physical Media

The requester may stipulate that the township provide public records on nonpaper physical media, email, or otherwise electronically provided to them.

The township can only charge the actual cost and use the most reasonably economically priced discs.

Paper Copies

The township can charge actual total incremental costs of necessary duplication or publication, not including labor.

The cost shall be calculated as a total cost per sheet and shall be itemized noting the cost per sheet and the total number of sheets used.

The cost cannot exceed 10 cents per page.

This includes 8 ½ x 11 and 8 ½ x 14 paper.

The township is required to use the most economical means available for making copies, including using double sided printing.

Actual labor costs can be charged in any time increment set by the township and must be rounded down (it doesn't have to be 15 minutes increments for paper)

Other Requirements

The township shall establish procedures and guidelines to implement the new FOIA law.

The township shall create a written public summary on specific procedures and guidelines relevant to the general public on how to submit a written FOIA request.

The township shall create a written public summary explaining how to understand our written responses, deposit requirements, fee calculation, and avenues to challenge and appeal.

These written public summaries have to be posted on our webpage, included in any written response, and provided upon request to anyone who asks for them at the office and they must be provided at no charge.

Procedures and Guideline Content

The procedures and guidelines shall include the use of a standard form for detailed itemization of any fee amount in its responses to written requests.

Summary of Changes to Michigan FOIA Law Effective July 1st, 2015

The detailed itemization shall clearly list and explain the allowable charges for each of the 6 fee components listed under subsection (1) that compose the total fee used for estimating or charging purposes.

The township may use a form created by the department of technology, management, and budget or create a form of their own that complies with the law.

If the township has not established procedures and guidelines, has not created a written public summary, or has not made those items publicly available without charge as required by July 1st, 2015 we must still honor all FOIA requests and cannot charge a deposit or any fee until we are in compliance.

Verbal Requests

The township can provide information without receipt of a written request.

If someone makes a verbal request for information that is on the website they have to be told its available on the website.

Deposit

The township may require a good faith deposit if, based on good faith calculation, the estimated cost will exceed \$50.

The deposit shall not exceed ½ of the estimated fee and shall include a detailed itemization.

The request for deposit also has to include a best effort to calculate the time frame of completion. The time frame provided is nonbinding, but we have to strive to be reasonably accurate.

Failure to Respond

If the township fails to respond to a written request in a timely manner we shall:

1. Reduce the charge for labor by 5% per day for each day the time requirement is exceeded with a maximum reduction of 50% if the late response is willful and wanton

Or

2. The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy”, or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

Summary of Changes to Michigan FOIA Law Effective July 1st, 2015

Unpaid Requests

If someone doesn't pay for their FOIA request you can require them to pay upfront for any further requests under certain circumstances.

You can no longer require upfront payment if they pay for the previous request or 365 days have passed.

Requests by Fax or Email

They are not considered "received" until the following business day.

If it goes to spam or junkmail it is not considered received until one business day after we are aware that it is there. If it does go into the spam or junkmail folder we are required to note the time it went into the folder and the time we became aware of the request.

Penalties

\$1,00 fine for arbitrary and capricious violation.

\$2,500-\$7,500 for willful violation or acting in bad faith.