

Shelby Area District Library

Part II: Freedom of Information Act Procedures and Guidelines

Procedure: Freedom of Information Act Requests, 1976 PA 442, MCL 15.231 et seq (FOIA)

Effective Date: 7/1/2015

A. Appointment of FOIA Coordinator

In accordance with section 6 of the FOIA, MCL 15.236, the Library has appointed a FOIA Coordinator, as well as an alternate FOIA Coordinator. The names of the FOIA Coordinator and alternate FOIA Coordinator are available from the Library Director's Office.

The FOIA Coordinator shall report action taken on FOIA requests at the next scheduled meeting of the Shelby Area District Library Board.

B. Submission of FOIA Request

FOIA requests to the Shelby Area District Library can be sent by email or mail to:

Email: tifhaight@shelbylibrary.org

Shelby Area District Library
Attn: FOIA Coordinator
189 Maple Street
Shelby, MI 49455

Requests should include a name, phone number, fax number (if available) and mailing address.

C. Immediately Forward FOIA Request

Any employee of the Library who receives a written request for a public record must immediately forward that request to the FOIA Coordinator. If a Library employee receives a written request for a public record that is delivered to a spam or junkmail folder, the employee must record the date and time the written request is delivered to the spam or junk-mail folder and date and time the employee first becomes aware of the written request. The employee must forward those dates and times to the FOIA Coordinator with the written request.

D. Request Response Time

The Library must respond to FOIA requests within 5 business days after receipt of the request. The Library may extend the time for responding by an additional 10 business days by notifying the requesting person in writing of the reason for the extension and the new due date. MCL 15.235(2) (d) and (6). Due to the short statutory time period within which

the Library must issue a written notice in response to the FOIA request, it is imperative that there be no delay in complying with the Library procedures and guidelines. Written requests made by facsimile, electronic mail or other electronic transmission are not received by the FOIA Coordinator until 1 business day after the electronic transmission is made.

E. Response to a FOIA Request

Only the Library's FOIA Coordinator or Alternate FOIA Coordinator will respond to FOIA requests. The Library will provide copies of these procedures and guidelines and a summary of these procedures and guidelines with each written response, or provide a link to an online version of these documents. If a request is denied, in full or in part, the Library will provide the requester with an explanation of the basis of the denial under the FOIA, and give notice to the requester of his or her remedial rights. MCL 15.235(4)

F. Notification of FOIA Request

Upon receipt of a FOIA request, the Library's FOIA Coordinator will email or fax the division or divisions of the Library that might possess records responsive to the FOIA request.

G. Division Response to Library's FOIA Coordinator

As soon as possible, but not later than two business days before the Library's FOIA response is due, the division's response is due to the FOIA Coordinator.

H. Assessment of Fees for a FOIA Request

The FOIA permits the Library to charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material, but only if the failure to charge a fee would result in unreasonably high costs to the Library because of the nature of the request in the particular instance, and the Library specifically identifies the nature of these unreasonably high costs. MCL 15.234(1) and (3)

The following fee guidelines for calculating labor and material costs incurred in processing FOIA requests are established pursuant to MCL 15.234(3):

1. Fees will be uniform and not dependent upon the identity of the requesting person.
2. Fees will be itemized using the attached detailed itemization form and will include:
 - A. Labor costs for the search, location, and examination of public records will be calculated using the hourly wage of the Library's lowest paid employee capable of conducting the search, location, and examination, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the Library's payroll records for the applicable fiscal

- year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
- B. Labor costs for the review of public records and separation and deletion of exempt from nonexempt material will be calculated using the hourly wage of the Library's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, whether they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the Library's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - C. Nonpaper physical media costs will be calculated using the actual and most reasonably economical cost of computer discs, computer tapes, and other digital and similar media provided by the Library.
 - D. Duplication and publication costs will be calculated using the actual total incremental cost of necessary duplication or publication of a public record, not including labor. The actual and incremental cost, calculated per sheet, shall be charged and will not exceed 10 cents per sheet of paper for letter or legal size paper. The Library shall use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available. The Library will not charge a fee for duplication costs of less than \$1.00.
 - E. Labor costs for the duplication or publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on nonpaper physical media or through electronic means, will be calculated using the hourly wage of the Library's lowest paid employee capable of duplicating or publishing the public records, whether they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on the Library's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - F. Actual costs of mailing using a reasonably economical and justifiable manner.
- 3. No Library employee shall agree to work overtime or include overtime wages in the labor costs described in these procedures and guidelines.
 - 4. If a requester submits an affidavit of indigency, the first \$20.00 of a fee will

be waived. A requesting person must include a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration. Other than \$20.00 for cases of indigency, no Library employee shall waive a fee or any part of a fee without authorization from the FOIA Coordinator.

5. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the Library's lowest paid employee capable of monitoring the inspection. Labor costs for monitoring an inspection will not be charged for the first hour. The hourly wage will be based on the Library's payroll records for the applicable fiscal year. Note: Section 3(3) of the FOIA, MCL 15.233(3), provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."
6. If a statute authorizes the sale or production of public records to the public for a specified fee or if a fee for production of public records is otherwise set by statute, the Library will charge the statutory fee in lieu of a fee calculated using the guidelines set forth above.
7. The Library will not charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material that will take less than one hour. If the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material will take more than one hour, a fee will be charged in accordance with this procedure pursuant to section 4 of the FOIA, MCL 15.234. The hourly wage will be based on the Library's payroll records for the applicable fiscal year.
8. If the FOIA Coordinator knows or has reason to know that all or a part of the requested information is available on the Library's website, the Library shall notify the requestor in its written response and shall include the website address in that response. The FOIA Coordinator shall separate the requested public records available on the website from those that are not available, and shall inform the requestor of the additional charge to receive copies of what is available on the website.

I. Deposit Requirements

If the Library estimates a fee to process a FOIA request greater than \$50.00, the Library will require a good-faith deposit from the requestor before providing the public records to the requestor. The deposit shall not exceed 1/2 of the total estimated fee. Any written notice containing a notice of a deposit shall also contain a best efforts estimate by the Library regarding the time frame after a deposit is received that it will take the Library to provide the public records to the requestor. The time frame estimate is not binding upon the Library, but the Library shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this State's public policy under section 1 of the FOIA, MCL 15.231, and the nature of the request in the particular instance.

If the requestor has made a previous request under FOIA for which the Library has not

been paid in full the total amount for copies of records requested, the Library may require, under conditions set forth in MCL 15.234(11), a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual.

J. Appeals of Fees and Disclosure Determinations

If the Library charges what the requestor believes to be an excessive fee or denies all or part of a request, the requestor may submit to the Anytown District Library Board, as the governing body of the Library, a written appeal that specifically states the word “appeal” and identifies the basis for which the fee should be reduced or the nondisclosure determination should be reversed. The Library Board shall designate the FOIA Coordinator to receive the written appeal and to immediately notify the head of the Library Board of its receipt.

K. Review of Fees and Disclosure Determinations

Under section 10(3) of the FOIA, MCL 15.240(3), the Library Board is not considered to have received a written appeal until the first regularly scheduled meeting of the Library Board following submission of the written appeal.

Should the Library Board decide to consult with the Library’s legal counsel on the appeal, it must comply with the time periods set forth in the FOIA for written responses as well as the provisions of the Michigan Open Meetings Act, 1976 PA 267, MCL 15.261 *et seq.*

L. Further Appeals Concerning Fee Reductions or Disclosure Determinations

A requestor may, within 180 days after the Library’s final determination to deny a request, commence a civil action in the circuit court to compel disclosure. Under section 10(4) of the FOIA, MCL 15.240(4), the “circuit court of the county in which the public record or an office of the public body is located has venue over the action.” Actions involving fee reductions must be filed within 45 days after receiving the notice of a required fee or the determination of an appeal to the Library Board.

Part III. Information to Include in a Summary of Charges (Itemization of Costs Form):

The policies and guidelines document must include an itemization of costs form that includes six categories under which charges may be made. FOIA charges are not mandatory, but the 2015 Amendments require the public body to have the guidelines and summary in place in order to be able to charge fees. Fee permissible under FOIA include:

1. **Labor costs for the search, location and examination of public records**
 - a. Lowest paid employee capable of performing the search
 - b. For search, location, examination, review, separation use time increments of 15 minutes or more, rounded down
 - c. No charge if you have the records on hand, for example, from a previous request

2. **Labor costs for review and separation for non-exempt and exempt materials**
 - a. Must be itemized to express hourly wage and number of hours: \$10/hour x 2 hours = \$20
 - b. May add up to 50% to cover or partially cover the cost of fringe benefits
 - c. Overtime wages shall not be included unless specifically stipulated to by the requestor and clearly noted on the form.
3. **Actual costs of non-paper physical media**
 - a. The requestor may “stipulate” that the records will be provided on non-paper physical media, by email or other electronic means
 - b. Actual and most reasonably economic cost of CD’s, etc.
 - c. This does not apply if the public body lacks the technological capability to transfer the records to the media
4. **Actual cost of duplication or publication**
 - a. May charge total cost per sheet
 - b. Must be itemized to express cost per sheet and number of sheets limited to actual total incremental cost or 10 cents per sheet of 8.5 x 14 inch paper, whichever is less
 - c. Use double-sided copying if it saves costs
5. **Labor costs for duplication and publication**
 - a. Lowest paid employee capable of performing the work
 - b. Time increments of the public body’s choosing, rounded down
6. **Actual costs of mailing**
 - a. Actual cost for mailing in a reasonably economical and justifiable manner
 - b. Cannot charge more for shipping or insurance unless “specifically stipulated to by the requester,” MCL 15.234(1)(f)
 - c. May charge for the least expensive form of postal delivery information

Other areas to include on a fee itemization or response form would include:

1. Deposits
2. Waivers or discounted fees: Under FOIA the first \$20 of a fee is waived with an affidavit of indigency.

SHELBY AREA DISTRICT LIBRARY
Freedom of Information Act Response

If payment is required as indicated in the accompanying letter, requested information will not be released until the payment described below is received. Please call the SADL FOIA Coordinator or return this form if you decide you do not wish to receive this information.

Part IV. Information to Include in a Written Public Summary:

Like any public body, a library must make its FOIA procedures and guidelines and the written public summary available to the public on its website, if it has one. Free copies of the summary must be provided upon request, including free copies for visitors to the library or municipal offices. MCL 15.234(4).

The **written summary** must explain:

How to submit written requests

How to understand the public body's written response

Deposit requirements

How a fee is calculated

Avenues for challenges to the public body's response and appeal, including whether the public body will allow an appeal of the fee.

Shelby Area District Library
Written Public Summary the Library's Freedom of Information Act
Procedures and Guidelines

Library documents and records shall be available to the public in accordance with the Michigan Freedom of Information Act, MCL 15.231 *et seq*, ("FOIA"). Costs associated with responding to a request will be charged to the requester. Some materials, such as the minutes of Library Board meetings, may also be available on the Library's website at <http://www.shelbylibrary.org>

A. How to submit written requests

FOIA requests to the Library can be sent by email or mail to:

Email: tifhaight@shelbylibrary.org

Shelby Area District Library
Attn. FOIA Coordinator
189 Maple Street
Shelby, MI 49455

Requests should include a name, phone number, fax number (if available) and mailing address.

B. How to understand the Library's written responses to FOIA requests

The Library has several options when responding to written requests for public records. It can grant the FOIA request, deny the request, grant it in part and deny it in part, or take one 10 business day extension. After 10 business days pass, the Library has to respond with one of the other options.

If the request is granted or granted in part and denied in part, the Library can also charge a fee to process the request. There is no fee for requests that do not require the Library to incur costs above the threshold set in its Procedures and Guidelines. Fees are calculated using its procedures and guidelines, and you will receive a detailed itemization of the fee. The Library may require you to pay a good-faith deposit before it processes your request. After you pay any deposit and final balance due, the Library will produce records in its possession that fall within the scope of your request and that legally may be disclosed to the public. The Library may also notify you that some of the records you have requested are available on its website.

If the request is denied, the Library will inform you of the basis for its denial in a

written notice. Reasons the Library may deny a request include:

1. You did not describe the records you have requested well enough and the Library cannot determine what you are asking for;
2. The Library has determined that it does not have records that respond to your request in its possession;
3. The records do not exist (the Library is not required to create new public records to satisfy a request, nor make a summary or compilation of information); or
4. The records you have requested are exempt from public disclosure under FOIA or another state or federal statute or regulation, for example, the Michigan Library Privacy Act, MCL 397.601 *et seq.* If all or part of your request is denied, the Library will inform you of your right to appeal its denial to the Shelby Area District Library Board and/or to file a lawsuit against the Library in its written response.

C. Deposit requirements

If the Library estimates a fee to process a FOIA request greater than \$50.00, the Library will require a good-faith deposit from you before providing the public records. The deposit shall not exceed 1/2 of the total estimated fee. Any written notice containing a notice of a deposit shall also contain a best efforts estimate by the Library regarding the time frame after a deposit is received that it will take the Library to provide the public records. The time frame estimate is not binding upon the Library, but the Library shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this State's public policy under section 1 of the FOIA, MCL 15.231, and the nature of the request in the particular instance.

If the total amount charged in a previous records request has not been paid in full, the Library may require a deposit of up to 100% of the estimated fee before a full search of records for any subsequent request.

D. Fee calculations

The FOIA permits the Library to charge a fee to process FOIA requests using a form to give you a detailed itemization of the costs involved. The Library may charge for the following costs:

- A. the costs of labor for the search, location, and examination of public records;
- B. the costs of labor for the review of public records and separation and deletion of exempt from nonexempt material;
- C. the cost of nonpaper physical media;
- D. the cost of duplication and publication of public records;

- E. the costs of labor for the duplication or publication of public records;
- F. the actual cost of mailing public records.

The first \$20.00 of a fee will be waived if a requester submits an affidavit of indigency. The requester must include a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

E. Avenues for challenge and appeal

If the Library charges a fee that you feel is too high, or denies all or part of a request, you may submit to the Library Board a written appeal that specifically states the word “appeal” and identifies the basis for which the fee should be reduced or the nondisclosure determination should be reversed. Written appeals may be sent to the email address or mailing address listed above and will be forwarded to the Shelby Area District Library Board or the person designated by the Library Board to respond to written appeals.

F. FOIA Procedures and Guidelines

The Shelby Area District Library maintains a website at <http://www.shelbylibrary.org>. The Library’s FOIA Procedures and Guidelines and Public Summary are available at no charge through this website. This link may be provided in lieu of providing paper copies in response to a written request, MCL 15.234(4).

Adopted by the Shelby Area District Library Board of Trustees on June 23, 2015