

**CITY OF ROYAL OAK
FREEDOM OF INFORMATION ACT (FOIA) POLICY**

This policy was established pursuant to resolution of the City Commission of the City of Royal Oak on February 17, 2003, as amended June 1, 2015. The policy identifies the procedures that City officers and employees are to follow when processing a request in accordance with Act No. 442 of the Public Acts of 1976, as amended (the "Act").

The City of Royal Oak's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in consistent, fair and even manner regardless of who makes such a FOIA request. The City of Royal Oak acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Royal Oak further acknowledges that it can be necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals. Further, it will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Royal Oak's policy is to disclose public records consistent with and in compliance with the State law.

SECTION 1. DEFINITIONS

- Act: The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.
- FOIA Coordinator: The individual, designated by the City Commission, who is responsible for accepting and processing requests for public records as outlined in this policy and the Act, and who is responsible for approving denials of requests, or that individual's designee as provided.
- Person: An individual, corporation, organization, or other legal entity, as modified by the Act.
- Public Body: The City of Royal Oak 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. DESIGNATION OF FOIA COORDINATOR

The City Clerk is hereby designated to be the City's FOIA Coordinator. In addition, the following officers shall be authorized to act as FOIA Coordinator designees: the Deputy City Clerk, the Police Records Supervisor, the Fire Department Administrative Assistant, and the City Attorney / City Manager Administrative Assistant. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records and approve denials in accordance with Sections of the Act.

SECTION 3. RIGHT TO RECORDS

A person, with the exception of those who are serving a sentence of imprisonment, has the right to submit a written request for public record(s) from the City and its departments. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

A person, with exception of those who are serving a sentence or imprisonment, has the right to submit a request by electronic mail and facsimile. FOIA requests received in such manner, are deemed to have been received on the following business day. If a FOIA request is sent by electronic mail and delivered to a city spam or junk-mail folder, the FOIA request is not deemed received until one day after the FOIA Coordinator first becomes aware of the FOIA request. The FOIA Coordinator shall note in the log the date of the FOIA request, date FOIA Coordinator became aware of the FOIA request and the method of delivery.

A person has the right to inspect a public record, unless exempted by law or court order. Original public records are not to be released from the City offices where the public records are secured. A person may request that copies of a public record be provided subject to the payment of fees outlined in the City of Royal Oak Freedom of Information Act Request Cost Worksheet.

A person has the right to subscribe to future issuances of regularly published public records as outlined in Section 3 of the Act for a period of six (6) months or less, which request may be renewed.

Upon 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.

SECTION 4. RIGHTS AND OBLIGATIONS OF THE PUBLIC BODY

The FOIA Coordinator shall provide reasonable facilities and opportunities for person(s) to inspect public records. To implement this Section, the FOIA Coordinator may prepare and submit to the City Commission for its approval rules to regulate the time and manner in which records are reviewed, to protect the records and to prevent excessive interference with the public body's normal operations.

The FOIA Coordinator shall provide a certified copy of a public record if a person requests the same in writing.

Neither the public body nor the FOIA Coordinator is obligated to create a record, list, compilation, or summary of information which does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. All public records shall be retained per established local policies, including all State Retention Schedules. Neither the public body nor the FOIA Coordinator is obligated to provide answers to oral or written questions.

The FOIA Coordinator shall provide copies of any public records as provided for in the Act and shall retain a copy of all written requests on file for a period of one (1) year, plus one (1) day.

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 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.

If the request indicates that the person wishes to have copies of a public record prepared and/or mailed, the FOIA Coordinator may first mail a FOIA Worksheet to the person and request a fifty percent payment of the anticipated charges and fees.

Upon receiving the person's executed FOIA Worksheet, where required, along with any payment due, the FOIA Coordinator will respond by providing those public records.

- 2) Issue a written notice denying the request, in whole or in part. If the FOIA request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial that shall provide in the applicable circumstance:
 - An explanation as to why a requested public record is exempt from disclosure, or
 - A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably know by the city, or
 - An explanation or description of the public record or information within a public record that is separated or deleted from the public record, and
 - An explanation of the person's right to submit an appeal of the denial to the City Manager or seek judicial review in the Oakland County Sixth Circuit Judicial Court, and
 - An explanation of the right to receive attorney's fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000.00 (one-thousand dollars), should they prevail in Oakland County Sixth Circuit Judicial Court.
 - The Notice of Denial shall be signed by the FOIA Coordinator.
- 3) 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 may send notice to the person requesting a clarification of the request. 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 non-exempt 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. The labor cost associated with such procedures shall be treated in accordance with Section 7.

SECTION 7. PROVISIONS FOR COPYING PUBLIC RECORDS

All FOIA requests submitted pursuant to the Act may be subject to fees and charges based on the actual cost of locating, handling, and copying. Postage and handling may also be charged as applicable and shall include the exact postage, as well as the cost for envelopes or other containers used for mailing copies of the public records requested.

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. In determining whether to charge a fee for labor, the FOIA Coordinator shall consider the anticipated cost to the City, the need for a devoted staff member to adequately respond to the particular request, and similar factors.

Where total fees and charges are reasonably anticipated to exceed Fifty Dollars (\$50.00), the public body is further authorized to require that fifty percent (50%) 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 the

public record copies. The FOIA Coordinator shall not charge additional fees for certification of any copies. Charges for labor costs shall be determined by using the wages of the lowest paid, full-time public body employee capable of retrieving the records requested.

The City of Royal Oak has limited in-house capabilities for copying photographs, audio or video tapes, microforms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at City rates) will also be applied to the charges to the person(s) requesting the public records.

Copy fees and mailing charges for future issuances of regularly published public records will be arranged through the FOIA Coordinator. A person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record for a period of time, not to exceed six months, unless extended. The FOIA Coordinator must sign the request form to confirm that the public record is one that is regularly published.

The city may waive or reduce the fee associated with a FOIA request when the city determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.

The city will waive the first \$20.00 of the processing fee for a FOIA request when the person submitting the request provides an affidavit stating they are:

- 1) Indigent and receiving specific public assistance.
- 2) If not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.

You are not eligible to receive the \$20.00 waiver if you have previously received discounted copies of public records from the city twice during the calendar year or if you are requesting information on behalf of other persons who are offering or providing payment to you to make the FOIA request.

The city will waive the fee for a nonprofit organization which meets all of the following conditions:

- The organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act,
- The FOIA request is made directly on behalf of the organization or its clients,
- The FOIA request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code, and
- The FOIA request is accompanied by documentation of the organization's designation by the State

The FOIA Coordinator will include a completed copy of the City of Royal Oak Freedom of Information Act Request Cost Worksheet with each response.

SECTION 8. APPEALS OF DENIAL OF PUBLIC RECORD

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 of the decision in accordance with the following process:

- 1) The person must file the appeal in writing, specifically stating the word "appeal".
- 2) The appeal must identify the reason or reasons the person is seeking a reversal of the denial.

- 3) Where a written appeal is received by the City in accordance with the Act, the City Manager shall review the materials submitted by the appellant, any written comments received from the FOIA Coordinator, and such other information as the City Manager deems necessary.
- 4) The City Manager may take one of the following actions in response to the filing of an appeal:
 - a) Reverse the disclosure denial.
 - b) Affirm the disclosure denial.
 - c) Reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.

SECTION 9. APPEALS OF EXCESSIVE FOIA PROCESSING FEE

In accordance with the Act, where a person feels they have been charged an excessive fee, the person must first submit a written appeal for a fee reduction to the City Manager.

1. The appeal of excessive FOIA processing fee must be in writing and specifically state the work "appeal".
2. The appeal of excessive FOIA processing fee must identify how the required fee exceeds the amount permitted.
3. Within ten (10) business days after receiving the appeal of excessive FOIA processing fee, the City Manager may take one of the following actions in response to the filing of an appeal:
 - a) Waive the fee.
 - b) Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee.
 - c) Upholding the fee and issue a written determination indicating the specific basis that supports the required fee.
 - d) Issuing a notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which the City Manager will respond to the written appeal of excessive FOIA processing fee.

Within 45-days after receiving the notice of the determination of an appeal of excessive FOIA processing fee, a requestor may commence a civil action in Oakland County Sixth Circuit Judicial Court for a fee reduction. If a civil action is filed appealed the excessive FOIA processing fee, the city is not obligated to process the request for the public record until the Court resolved 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 appropriate amount of reasonable attorney's fees, costs and disbursements.

If the Court determines that the city has acted arbitrarily and capriciously by charging an excessive FOIA processing fee, the Court shall also award the appellant punitive damages in the amount of \$500.00 (five-hundred dollars).

SECTION 10. CONFLICT WITH PRIOR FOIA POLICIES AND PROCEDURES, EFFECTIVE DATE

To the extent that these policies and procedures conflict with previous FOIA policies promulgated by the City Commission, these policies are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Commission, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these policies or any administrative rule promulgated by the FOIA Coordinator 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 modify this policy and all previous policies adopted by the City Commission, and to adopt such administrative rules as she or he 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. The FOIA Coordinator shall inform the City Commission of any changes to these policies.

These FOIA Policies shall become effective July 1, 2015.

SECTION 11. PENALTY FOR VIOLATION OF THE ACT

If the Court determines in either an appeal of denial of a public record, or the appeal of an excessive FOIA processing fee, that the public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, then in addition to any other award or sanction, the Court shall impose a civil fine of not less than \$2,500.00 (two-thousand, five-hundred dollars) or more than \$7,500.00 (seven-thousand, five-hundred dollars) for each occurrence.

The Court is required to consider the budget of the public body and whether the public body has been previously assessed penalties for violations of the FOIA statute.

The civil fines are to be deposited to the General Fund of the State Treasury.

SECTION 12 FORMS

Pursuant to the amendments to the ACT, the City has promulgated a City of Royal Oak Freedom of Information Act Request Cost Worksheet that shall be included with each response. Additionally, for the convenience of the person(s) requesting public records under the Act, request forms for both general requests and police department records are provided.