

CITY OF LUDINGTON

SUMMARY OF FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

City of Ludington FOIA Coordinator
400 S. Harrison St.
Ludington, Michigan 49431
Phone (231) 845-6237

The Michigan Freedom of Information Act, being Public Act 442 of 1976 (MCL §15.231 *et seq.*; “FOIA” or the “Act”), mandates disclosure of most public records. To fulfill this mandate, the City of Ludington (“City”) has adopted and updated its “Freedom of Information Act Procedures and Guidelines” (the “Procedures”) for handling FOIA requests. This document summarizes the City’s Procedures in accordance with the Act but is only a summary of the City’s Procedures and the obligations and responsibilities of all parties involved in a FOIA request as set forth in the Act. For more details and information, copies of the City’s complete FOIA Procedures and Guidelines are available at no charge at City Hall and on the City’s website.

1. Submitting a FOIA Request

A request for City records must be submitted in writing to the City’s FOIA coordinator. The City manager has been designated by the City Council as the City’s FOIA coordinator. You may request either (a) to receive a copy of City records, or (b) to inspect or review City records, and you may submit the FOIA request for records in person, by mail, or by electronic means (i.e., fax, email, or other electronic submission of a written request). Requests submitted in person or by mail are deemed received by the City as of the date of receipt. Requests submitted to the City via electronic means are deemed received by the FOIA coordinator one business day after the date the electronic transmission is made.

- In order to ensure the most prompt response possible, you should address written correspondence to the City’s “FOIA Coordinator,” and otherwise include the words “FOIA” or “FOIA Request” in a conspicuous location in the request, such as the outer envelope of a mailed letter, the subject line of an email, or the first sentence of a letter.
- A request must sufficiently describe a public record so as to enable the City to find it.
- Written requests may be delivered to City Hall in person or by mail to the following address:

City of Ludington
Attn: FOIA Coordinator
400 S. Harrison St.
Ludington, MI 49431

- Requests may be faxed to: (231) 845-1146. Again, to ensure a prompt response, faxed requests should contain the terms “FOIA,” “FOIA Request,” or “FOIA Coordinator” on the cover page.
- Requests may be emailed to: mfoster@ci.ludington.mi.us. Again, to ensure a prompt response, email requests should contain the term “FOIA,” “FOIA Request,” or “FOIA Coordinator” in the subject line.
- A request sent to the City by email, fax, or other electronic means will be considered to have been received one business day after the day on which the request was transmitted.

2. City’s Response to a FOIA Request

Once the City receives your FOIA request, the City must respond to your request within five business days, although the City may extend the period in which it must respond by not more than ten business days in addition to the usual five business days.

In response to a FOIA request, the City may: (1) grant the request (and provide either a copy of the requested record or the opportunity to review the record, in accordance with your request); (2) deny the request if no such record exists or the record is exempt pursuant to one or more provisions of the Act or another Michigan law; (3) grant the request in part and deny the request in part.

If the City issues a ten business day extension for its response to the FOIA request, the City’s ultimate written response to the FOIA request will include (1) a good faith estimate as to when the City will provide the requested records to you, and (2) a detailed summary of the estimated costs, if any, to provide the requested records to you.

Please note that the Act does not require the City to make a compilation, summary, or report or to create a new public record concerning the information requested.

3. Reviewing City Records

You may request the opportunity to review or inspect City records. If you make such a request, the City will make facilities available to inspect the requested records during the City’s normal business hours and when the records can be reasonably made available. You must submit a request form describing the requested documents prior to the City allowing the inspection of the records.

You cannot write or take any notes on original City records that you are reviewing, and you will only be allowed to have an erasable pencil with you to take notes – No pens or indelible writing instruments are allowed. No notes or writing of any kind shall be made on the public records of the City. A City official will be present during the inspection of City records if original records are involved and you may be charged a fee to defray the City’s cost of the monitoring service to protect the records from loss, unauthorized alteration, mutilation, or

destruction. Original records cannot be removed from the area provided for inspection and note taking.

4. Requesting Copies of City Records.

You may request to receive copies of City records. The City will review the available records and provide you with copies of the records unless the records do not exist, are not in the possession of the City, or are exempt from disclosure under FOIA.

5. Calculation and Payment of Fees; Deposit.

Under the Act, the City may charge a fee for providing you with a copy of a public record, including labor costs, where the failure to charge a fee would result in unreasonably high costs to the City based on the nature, contents, and scope of a request. Prior to issuing a final response to a request, the City will provide you with a written estimate of the applicable fees. The City may require the payment of a deposit or, in certain circumstances, waive payment of the fee altogether.

A. Calculation of Fee.

In order to help recoup some of the cost to the City for searching, reviewing, redacting, copying, and mailing requested public records, the City may charge you a fee to respond to your request. The fee will be limited to actual mailing costs, and the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information pursuant to Section 14 of the Act. The City will mail or email the available requested public records to you upon payment of the applicable fees. The fees charged by the City for responding to your request may include:

- A fee for the City's labor costs directly associated with (1) making copies (including paper or digital copies), (2) searching for, locating, and examining the requested records, and (3) the necessary review of and separation and deletion of exempt information from nonexempt information. You will not be charged for the redaction of documents if the City previously redacted the public record in question for the same purpose that your request would be redacted and the previous redacted version is still in the City's possession.
- The City's actual cost of mailing the requested records to you. The City will not send documents via overnight deliver service or expedited shipping (or obtain shipping insurance on such mailing(s)) *unless* you specifically request such services in writing and agree to pay for such costs.
- The cost to copy the records. Paper copies of public records made on standard letter (8½" x 11") or legal (8½" x 14") sized paper will not exceed \$0.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction. The City may copy records using double-sided printing (if available).

If the City needs to send the records to a commercial copy center for copying, you will be charged for those costs.

- The City's actual costs to copy photographs, audio or videotapes, microforms, maps, architectural renderings or drawings, and/or schematic or other plans including any costs incurred to have third-party make such copies. If a City official or employee is required to deliver and/or pick up the public records and/or copies of public records, you will be charged for the labor hours (calculated in accordance with the Procedures) spent and applicable mileage (at the then-current IRS mileage reimbursement rate).

For labor costs incurred in complying with your request, the City will charge the hourly wage of its lowest-paid employee capable of performing the necessary task, regardless of whether that person is available or who actually performs the labor. The labor charges will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward. The labor charge will include an amount equal to one-half (50%) of the applicable hourly wage to cover (or partially cover) the cost of the fringe benefits (if any) for the lowest-paid employee; provided, however, that such amount will not exceed the actual costs of the fringe benefits.

The review and separation of exempt from nonexempt information may be performed by a City official or employee, or, if necessary, outside legal counsel. For services performed by outside legal counsel, the City may charge the legal counsel's time; the charge will not exceed an amount equal to six times the then-current state minimum hourly wage rate. The City will provide you with a notice as to the name of the contractor person or firm in the City's detailed itemization of costs. The charges for such services will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward.

B. Fee Waiver.

The City may waive all or a portion of the fees for the search and copying of records if the City 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 primarily benefitting the general public. A public record search shall be made and copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either: (a) a person who submits an affidavit stating that they are indigent and receiving specific public assistance, or (b) if not receiving public assistance, stating facts showing an inability to pay the cost because of indigency. If a requesting person is ineligible for a discount, the City shall provide written notice of ineligibility and the reasons for ineligibility in the City's response to the FOIA request. An affidavit is a sworn statement, and the City may provide a Affidavit of Indigence form for the waiver of FOIA fees upon request.

Under the Procedures, you may be ineligible for a fee reduction or waiver if: (a) you previously received discounted copies of public records from the City twice during the calendar year; (b) you are making the records request in conjunction with outside parties who are offering

or providing payment or other remuneration to you to make the request; or (c) you are a specific type of nonprofit corporation (as provided in the Act and the City's Procedures).

C. Deposit.

If the City estimates in good faith that the total fee for processing your request will exceed Fifty and 00/100 (\$50.00) Dollars, you may be required to pay a good faith deposit in the amount of 50% of the total estimated fee prior to the City processing the fulfillment of your request for public records. When the City requests the deposit, it will provide you with an itemized estimate of the fees, as well as a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit. In certain circumstances, the City may require payment of a deposit equal to 100% of the estimated charge for fulfilling your request for records as provided under the Act and the Procedures, typically involving scenarios where an individual previously failed to pay the total amount due from a prior FOIA request to the City.

6. Rights to Appeal.

You can appeal decisions made with respect to the records that you requested if the request was denied or denied in part, and/or you may appeal the amount of the estimated fees for responding to your request. An appeal from a determination by the FOIA coordinator or from a decision of the City Council may be taken to the Mason County Circuit Court, depending on the nature of the appeal.

A. Appeal of Denial of Records (in whole or in part).

You have the right to submit to the City Council a written appeal that specifically states the word "appeal" and identifies the reason or reasons that you assert in support of reversing a decision to deny or not disclose the public records requested. In the alternative, you have the right to seek judicial review of the denial or nondisclosure.

Under Section 10 of the Act, you have the right to receive attorneys' fees and damages if, after judicial review, the Mason County Circuit Court determines that the City has not complied with Section 5 of the Act and that the court orders disclosure of all or a portion of a public record that had not been disclosed to you by the City.

B. Appeal of Calculation of Fee.

A requesting person may appeal the amount of a fee to the City Council or the Mason County Circuit Court if that fee exceeds the amount permitted under the Act and the City's Procedures.

An appeal on the amount of the fee to the City Council must specifically include the word "appeal" and must identify how the required fee exceeds the amount permitted under the Act or the Procedures.

If you, the requesting person, file a fee appeal in the Circuit Court, the City will not complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

Within 10 business days after receiving a written appeal of the fee, the City Council is required to: (1) Waive the fee; (2) Reduce the fee and provide written notice as to the basis for the remaining fee; (3) Uphold the fee and provide written notice as to the basis for the fee; or (4) Issue a notice extending for not more than 10 business days the period during which the City Council must respond to the appeal (the notice will include a detailed reason(s) as to why the extension is necessary).

Any appeal will be deemed to have been received by the City as of the date of the first regularly scheduled City Council meeting following submission of the written appeal.

A deposit required to be paid by the City is considered a “fee.”

7. Additional Information; Revisions to Summary and Procedures.

Additional information may be found in the City’s Procedures, which may be obtained from the City at City Hall, 400 S. Harrison Street, Ludington, Michigan 49431 at no charge.

This Summary and the Procedures may also be found on the City’s website at: <https://www.ludington.mi.us>.

This Summary and/or the Procedures may be modified, amended, or revised from time to time by the City Council and without notice.