

SUMMARY OF PROCEDURES GOVERNING REQUESTS UNDER MICHIGAN FREEDOM OF INFORMATION ACT

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Introduction

The Michigan Freedom of Information Act, MCL 15.231, *et seq.* (“FOIA”) requires the Detroit Public Schools Community District (“DPSCD” or the “District”) to establish a public summary of the procedures and guidelines for submitting written requests and for providing an explanation of the District’s written responses, deposit requirements, fee calculations, and appeal rights.

The procedures and guidelines outlined in this document regarding time frames, appeals, and fees do not apply to public records requested, prepared, or otherwise exempt from disclosure, to include, but not limited to, the Public Health Code, MCL 333.1101, *et seq.*, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, Public Employment Relations Act, MCL 423.201, *et seq.*, or the Bullard-Plawecki Employee Right to Know Act, MCL 423.501, *et seq.*

All officers, employees, and agents of the District shall protect public records from loss, unauthorized alteration, mutilation, or destruction. All persons have a right to inspect, copy, or receive copies of requested public records, except those specifically cited as exemptions. The District is not required to create new public records, complications, summaries, or reports of information to respond to a FOIA request.

In accordance with section 6 of the FOIA, the Superintendent has designated a FOIA Coordinator to whom is responsible for accepting and processing all written requests for public records. The FOIA Coordinator, or any other designee, is not required to respond to oral requests for public records but may do so for routine requests that may be granted immediately. If a written request is received by a District employee other than the FOIA Coordinator, the original shall be promptly forwarded to the FOIA Coordinator. A written request made by facsimile, electronic mail, or other electronic transmission is not received by the FOIA Coordinator until one (1) business day after the electronic submission is made. If a request is delivered to a spam or junk mail folder, the request is not received by the FOIA Coordinator until one (1) business day after it is discovered.

Upon request for public inspection, the FOIA Coordinator, or any other designee, shall furnish a requestor a reasonable opportunity for inspection and examination of the requested public records, subject to applicable exemptions, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during regular business hours. A requestor may stipulate the public records be provided on non-paper physical media, electronically delivered, or otherwise electronically transmitted in lieu of paper copies. Notwithstanding the preceding, such stipulation must be within the technological capabilities of the District. A person may subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall remain valid for up to six (6) months, at the request of the subscriber, and shall be renewable.

General questions, concerns, or comments should be directed to:

Detroit Public Schools Community District
Office of the General Counsel
ATTN: FOIA Coordinator
3011 W. Grand Boulevard, Suite 1002
Detroit, Michigan 48202

Office: (313) 873-4528
Electronic Mail: foia.request@detroitk12.org

Ways to Make a Request

Any person seeking to receive a copy of a public record should make a written request to the District in one of the following ways:

1. Online Public Records Request Form (Preferred Method)
2. By electronic mail at foia.request@detroitk12.org
3. By U.S. Mail to:

Detroit Public Schools Community District
Office of the General Counsel
ATTN: FOIA Coordinator
3011 W. Grand Boulevard, Suite 1002
Detroit, Michigan 48202

All requests must include the requester's full name, mailing address, telephone number and electronic mail address.

Requests should be detailed and sufficiently describe the record to enable the District to search and locate the requested record. All written requests should be clearly identified as a "Freedom of Information Act Request" or "FOIA Request".

Overview of the District's Response

Unless otherwise agreed to in writing by the person making the request, the District has five (5) business days to respond to a request for a public record.¹ Requests transmitted by electronic mail or facsimile are considered received one (1) business day following the date of delivery. If a FOIA request is sent by U.S. mail, it is considered received the day of receipt. Issuing a notice extending for not more than ten (10) business days the period during which the District shall respond to the request. A public body shall not issue more than one (1) notice of extension for a request.

Statutorily Required Responses

The District will issue one or more of the following responses:

- i. Grant the request.
- ii. Deny the request.
- iii. Grant the request in part and deny the request in part.
- iv. Issue notice of the ten (10) business day extension of the District's response time.

Whenever applicable, the District will inform a requester that the requested information is available on the District's website or inform the requester of the pertinent website address. If a website address is included in the District's written response and the requester still requests that the records be provided in paper format (or another form), the District shall provide the records. However, the District may use a fringe benefit multiplier greater than 50% in its charges for labor costs for production, not to exceed the actual costs of providing the records in the specified format.

¹ MCL 15.235(10)

Labor Costs, Fees, and Good Faith Deposits

The District may charge a fee for providing copies of public records. The District will charge all applicable costs allowable under section 4 of the FOIA for each request. Specific exclusions will be made only as provided, a waiver of the first \$20.00 of fees charged for recipients of public assistance or individuals who are indigent.

Individuals who are indigent and/or receiving specific public assistance who are requesting a waiver of the first \$20.00 of the fee must submit an affidavit stating that the individual is receiving public assistance or if not receiving public assistance, the individual must provide a statement of sufficient showing of an inability to pay the cost because of indigency. The FOIA Fee Waiver Affidavit is available on the District's website. The waiver will be granted or denied based upon verification of indigence or public assistance status.

An individual is ineligible for the waiver if any of the following apply:

- (i) The requestor has received the waiver twice during the calendar year.
- (ii) The requestor is seeking the information in conjunction with other parties who are offering to pay them to make the request.

Commensurate with the FOIA, assessed costs may include:

- (i) Actual mailing costs.
- (ii) Actual incremental costs of duplication and/or publication including labor.
- (iii) Actual cost of non-paper physical media (e.g., computer discs, etc.).
- (iv) Labor costs—the cost of search, examination, review, deletion, and separation of exempt from nonexempt information as provided in section 4 of the FOIA.

The District shall establish fees and publish a *FOIA Fee Schedule* with costs and rates for mailing, duplicating, as well as labor costs for searching, examining, reviewing for the deletion and separation of exempt from non-exempt information.

The *FOIA Fee Schedule* will be published, reviewed, and updated periodically as necessary. It shall also serve as guidance in cases where charges are unspecified and include the following:

- (i) Mailing: Current actual cost of first-class postage
- (ii) Copying/Duplication: starting at \$.10 per page and actual non-paper physical media
- (iii) Labor: Hourly wage rate, including benefits (50%), of the lowest paid capable employee for search, examination, review for separation and deletion of exempt from non-exempt information and duplication.

Copying/Duplication

The District shall use the most economical means for making copies, including using double sided printing, if cost saving and available. The District will provide records using non-paper physical media using available technology at the actual and most reasonably economical cost of the media.

Labor Costs

Labor costs will be calculated using the hourly wage, including fifty percent (50%) of any applicable fringe benefits, of the District's lowest paid employee capable of performing the necessary tasks to process the FOIA request. Fees will include the labor cost of transferring paper copies to other requested formats. Labor costs in excess of that amount will be calculated in accordance with the FOIA and *FOIA Fee Schedule*. Labor costs will be calculated in 15-minute increments. Contracted labor costs shall not exceed 6 times the state minimum hourly wage.

If the District does not provide its response in a timely manner, labor costs shall be reduced by 5% for each day the time permitted is exceeded with a max. 50% reduction, if either of the following applies:

- (i) The late response was willful and intentional.
- (ii) The written request included language within the first 250 words of the body, such as “information” or “FOIA” that conveyed a request pursuant to the FOIA.

If a reduction in charge occurs, the reduction shall be detailed on the cost itemization of fees.

If the search, retrieval, examination, review and separation and deletion of exempt from nonexempt information or computerized records, or any part thereof, require specialized knowledge, the labor costs will be calculated using the hourly wage, including benefits, of the District’s lowest paid specialist, technical, management or executive classification employee capable of performing the necessary tasks to process the request. Using the information provided by the department and the *FOIA Fee Schedule*, the FOIA Coordinator shall determine the amount of fees to charge, if any.

Wage and benefit information are based on DPSCD Human Resources compensation plans.

Good Faith Deposits

If the fees required to fulfill a request are reasonably expected to exceed \$50.00, a good faith deposit of one-half of the total estimated fee is required. The District will require payment of the fee in full before releasing the requested records. A requestor who has not previously paid the District for requested records will be required to pay a one hundred (100%) deposit (fee-in-full) before their request is processed, if all the following apply:

- (i) the final fee for the prior request was not more than 105% of the estimated fee.
- (ii) the records contain the information sought and are still in the District’s possession.
- (iii) the records were made available within the required deadlines.
- (iv) ninety (90) days have passed since the individual was notified in writing that the records were available for pickup.
- (v) the individual is unable to show proof of prior payment.
- (vi) the District calculates an itemized fee that is the basis for the current written request’s increased estimated fee deposit.

Payment of 100% of the estimated fee as a deposit shall no longer be required if any of the following apply:

- (i) the requestor shows proof of the prior payment.
- (ii) the requestor pays for the prior request.
- (iii) one (1) year has passed since the requestor made the prior request for which no payment was remitted.

Requester's Rights

A requester has a right to appeal a denial of a request for public records, or a determination of fees charged.

Appeal of a FOIA Decision

Pursuant to section 5(4)(d) of the FOIA, a requester has the right to appeal the denial of a request for public records to Superintendent Dr. Nikolai P. Vitti. Copies of the original FOIA request and final decision letter must be submitted when filing an appeal.

Appeals should be submitted in writing by:

U.S. Mail:

Detroit Public Schools Community District
Office of the General Counsel
ATTN: General Counsel
3011 W. Grand Boulevard, Suite 1002
Detroit, Michigan 48202

Electronic Mail: foia.request@detroitk12.org

In response to the appeal, within 10 business days, or no more than a total of 20 business days, if the extension is taken as permitted under the FOIA, the District will:

- (i) reverse the denial.
- (ii) uphold the denial.
- (iii) reverse in part and uphold in part.
- (iv) under unusual circumstances, issue a notice of extension for not more than 10 business days.

A failure to respond to the requester within 10 business days, or to provide notice extending the time to respond, is deemed a denial of the appeal. The requested documents will not be produced until the appeal is resolved. You will receive a response to the appeal in accordance with MCL 15.240 and 15.240a of the FOIA.

A requester has the right to seek judicial review of the denial under section 10 of the FOIA by filing a lawsuit in circuit court.

Appeal of a FOIA Fee

Requesters may appeal the final decision of a fee charged for the labor costs associated with the preparation and processing of a FOIA request for public records.

As provided in section 5(4)(d) of the FOIA, a requester has the right to appeal a FOIA fee to Superintendent Dr. Nikolai P. Vitti. Copies of the original FOIA request and final decision letter must be submitted when filing an appeal.

Appeals should be submitted in writing by:

U.S. Mail:

Detroit Public Schools Community District
Office of the General Counsel
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Detroit, Michigan 48202

Electronic Mail: foia.request@detroitk12.org

In response to the appeal, within 10 business days, or no more than a total of 20 business days, if the extension is taken as permitted under the FOIA, the District will:

- i. Waive the fee.
- ii. Reduce the fee and issue a written determination indicating the specific basis under section 4 of the FOIA that supports the remaining fee amount and affirming that the statements in the determination are accurate, and the reduced fee complies with the District's publicly available procedures and guidelines and section 4 of the FOIA.
- iii. Uphold the fee and issue a written determination indicating the specific basis under section 4 of the FOIA that supports the required fee amount and affirming that the statements in the determination are accurate, and the fee complies with the District's publicly available procedures and guidelines and section 4 of the FOIA.

A failure to respond to the requester within 10 business days, or to provide notice extending the time to respond, is deemed a denial of the appeal. The requested documents will not be produced until the appeal is resolved. You will receive a response to the appeal in accordance with MCL 15.240 and 15.240a of the FOIA.

A requester has the right to seek judicial review of the denial under section 10 of the FOIA by filing a lawsuit in circuit court.

Key Definitions

A **FOIA Coordinator** means either of the following:

- (i) An individual who is a public body.
- (ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.²

A **person** is defined as “an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.”³

A **public record** is “a writing 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. Public record does not include computer software. This act separates public records into the following 2 classes:

- (i) Those that are exempt from disclosure under section 13.
- (ii) All public records that are not exempt from disclosure under section 13 and that are subject to disclosure under this act.”⁴

Software means “a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.”⁵

Unusual circumstances is defined as “any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

- (i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
- (ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.”⁶

Writing is a “handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid state storage components, or other means of recording or retaining meaningful content.”⁷

A **written request** “means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.”⁸

² MCL 15.232(b).

³ MCL 15.232(c).

⁴ MCL 15.232(e).

⁵ MCL 15.232(f).

⁶ MCL 15.232(g).

⁷ MCL 15.232(h).

⁸ MCL 15.232(i).