



MICHIGAN INDIGENT
DEFENSE COMMISSION

Michigan Indigent Defense Commission
Freedom of Information Act Procedure

Procedure: Freedom of Information Act (FOIA) Requests
Effective Date: July 1, 2015

- A. **Appointment of FOIA Coordinator.** In accordance with section 6 of the FOIA, MCL 15.236, the Michigan Indigent Defense Commission (“the Commission”) has appointed a FOIA Coordinator. The name of the FOIA Coordinator is available by contacting the Commission’s office. If the FOIA Coordinator is absent from the office for longer than two days, he or she may appoint a temporary FOIA Coordinator to respond to requests with the FOIA Coordinator’s direction.

- B. **Submission of FOIA Request.** FOIA requests to the Commission can be sent by mail to the Michigan Indigent Defense Commission, Attn: FOIA Coordinator, 200 N. Washington Square, Lansing, MI, 48933. E-mail requests may be submitted to: foia@michiganidc.gov. A request should include a name, telephone number, and mailing address.

- C. **Immediately forward FOIA Request.** Any employee or member of the Commission who receives a written request for a public record must immediately forward that request to the FOIA Coordinator.

If an employee or member of the Commission receives a written request for a public record that is delivered to a spam or junk-mail folder, the individual must record the date and time the written request is delivered to the spam or junk-mail folder and date and time the individual first becomes aware of the written request. The employee must forward those dates and times to the

FOIA Coordinator with the written request. If the request is received through the mail, both the request and the envelope must be retained.

A written request for a public record is considered to be a FOIA request unless the requestor specifically states in writing that the request is not being made under FOIA. A written request may be transmitted by facsimile machine, e-mail or any other electronic means.

The Commission's FOIA Coordinator will review the request and email the individual(s) within the Commission that might possess records responsive to the FOIA request. The individual(s) must provide a written response to the FOIA coordinator as soon as possible, but not later than two business days before the Commission's FOIA response is due.

D. Request response time. The Commission 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 Commission must issue a written notice in response to the FOIA request, it is imperative that there be no delay in complying with the Commission's procedures.

E. Response to a FOIA Request. Only the Commission's FOIA Coordinator, or his or her temporary designee, will respond to FOIA requests. If a request is denied, in full or in part, the Commission will provide the requester an explanation of the basis of the denial under the FOIA, and give notice to the requester of his or her appeal rights. MCL 15.235(4)

Under MCL 15.231(2) and 15.232(c), prisoners are not entitled to make FOIA requests. Prisoners also have no right to appeal or file suit under FOIA if a request for public records is denied. Therefore, prisoner requests for public records shall not be processed as FOIA requests but instead responded to by staff in the same timely manner as any other correspondence, with requested documents provided as appropriate.

The FOIA Coordinator shall maintain a copy of all FOIA requests received and responses. These documents shall be retained and disposed of in

accordance with the Commission's Document Retention and Disposal Schedule.

- F. **Assessment of Fees for a FOIA Request.** The FOIA permits the Commission 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 Commission because of the nature of the request in the particular instance, and the Commission 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 Commission'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 Commission'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 Commission's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, 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 Commission'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 Commission.

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 Commission shall use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available.

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 Commission's lowest paid employee capable of duplicating or publishing the public records, 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 Commission'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 Commission employee shall stipulate 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.

5. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the Commission'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 Commission'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 Commission will charge the statutory fee in lieu of a fee calculated using the guidelines set forth above.

7. The Commission 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 Commission's payroll records for the applicable fiscal year.

G. Deposit Requirements. If the Commission estimates a fee to process a FOIA request greater than \$50.00, the Commission 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 Commission regarding the time frame after a deposit is received that it will take the Commission to provide the public records to the requestor. The time frame estimate is not binding upon the Commission, but the Commission 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.

H. Appeal

1. If the Commission charges a fee or denies all or part of a request, the

requestor may submit a written appeal to the Chair of the Commission or his or her designee. The appeal must be submitted in writing, mailed or emailed to the addresses listed above, must specifically state the word “appeal” and must identify the reason or reasons for the reduction in fees or a reversal of the denial. MCL 15.240(1)

2. If the Commission charges a fee or denies all or part of a request, the requestor may submit to the Chairperson a written appeal that specifically states the word “appeal” and identifies the basis for which the fee should be reduced or the disclosure determination should be reversed. Written appeals may be sent to the email address or mailing address listed above and will be forwarded to the Attorney General or the person designated by the Attorney General to respond to written appeals.
3. The Chair of the Commission or his or her designee shall do one of the following within 10 business days: reverse the disclosure denial; issue a written notice to the requesting person upholding the disclosure denial; reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part; or, under usual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. Not more than one notice of extension shall be issued for a particular written appeal. MCL 15.240(2)