

CITY OF INKSTER

FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

Preamble: Statement of Principles

It is the policy of the City of Inkster (“the City”) that, consistent with Michigan’s Freedom of Information Act (“FOIA” or “the Act”), all persons, excepting those incarcerated, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process. The City’s policy regarding FOIA requests is to comply with State law in all respects, and to respond to all such requests in a consistent, fair, and even-handed manner, irrespective of who makes such a request.

While the City appreciates its legal obligation to disclose all nonexempt public records in its possession upon request, at the same time it acknowledges that it is necessary, on occasion, to invoke the exemptions enumerated in MCL 15.243 in order to ensure the effective operation of government and to protect the privacy of individuals. The City will do its utmost to balance the protection of the public's interest in disclosure with the withholding or redacting of portions of certain records.

I. GENERAL POLICIES

Pursuant to MCL 15.236, the City Council designates the City Clerk as the FOIA Coordinator (“the FC”). The FC is authorized to designate other City employees or agents to act on his or her behalf to accept and process written requests for the City’s public records and to approve denials. If a request for a public record is received by facsimile or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a City spam or junk-mail folder, the request is not deemed received until one (1) day after the FC first becomes aware of the request. The FC shall maintain a written record of FOIA requests, which must note therein both the date a request was delivered to the spam or junk-mail folder and the date the FC became aware of the request. The FC shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FC shall work with the City’s Information Technology personnel to develop administrative rules for handling spam and junk-mail so as to protect the City’s computer

systems from attacks which may be imbedded in an electronic FOIA request.

The FC may, in his or her discretion, implement administrative rules to administer the acceptance and processing of FOIA requests, provided such rules are consistent with both State law and these Procedures and Guidelines. The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FC nor other City personnel are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves. The FC shall keep a copy of all written requests for public records received by the City on file for a period of at least one (1) year.

The City shall ensure that these Procedures and Guidelines and the Written Public Summary are publicly available without charge. A copy of these Procedures and Guidelines and the City's Written Public Summary must be publicly available by providing free copies upon request by visitors at the Office of the City Clerk. Furthermore, these Procedures and Guidelines and the City's Written Public Summary shall be maintained on the City's website, www.cityofinkster.com. As the aforementioned documents are electronically available, paper copies of the same will not be furnished. However, subpoenas from any court, attorney, or any other individual requesting the production of any City record, including these Procedures and Guidelines and the City's Written Public Summary shall immediately be forwarded to the City Clerk, and constitute an exception to this policy.

II. REQUESTING A PUBLIC RECORD

All requests for the inspection or acquisition of copies of public records prepared, owned, used, possessed, or retained by the City must be in writing. Such requests must sufficiently describe a public record so as to enable City personnel to identify and locate that which is requested. Although the City does not require that requests be made with a specific form, the FC may generate a request form and make it available to the public.

All written public record requests must contain the requestor's:

- (1) Full name;
- 2) Address written in compliance with United States Postal Service ("USPS") standards; and
- (3) Valid, operable telephone number or email address.

A request from an entity (e.g., corporation, limited liability company) must be made by the entity's duly authorized representative (e.g., agent, registrant), who must also provide his or her full name, USPS-compliant address, and valid, operable telephone number or email address.

Public-record requests may be submitted to the FC in person, or via ordinary mail, courier service, facsimile, or email and, upon receipt, shall be promptly forwarded to the FC for processing. Although an individual may request that records be emailed or otherwise digitally furnished, the City is not obligated to honor such a request and will only do so if it presently possesses the necessary technological capabilities. If applicable, an individual may subscribe to future issues of public records that are created, issued, or disseminated by the City on a regular basis. A subscription is valid for up to six (6) months, whereupon it may be renewed by the subscriber.

In limited instances, the FC may implement administrative rules permitting oral public-record requests; however, such requests regarding documents not available on the City's website are not deemed to fall within the scope of the FOIA statute. Any request to review or receive copies of any portion of a personnel file maintained by the City or in its possession must be in writing. This policy does not affect the right of current or former City employees to review or receive copies of documents from their own personnel files. A person serving a sentence of imprisonment in a local, state, or federal correctional facility is not entitled to submit a request for a public record, and the FC will deny all such requests.

III. PROCESSING A REQUEST

Unless otherwise agreed to in writing by the requestor, within five (5) business days of the receipt of a FOIA request the City shall:

- (1) Grant the request;
- (2) Deny the request;
- (3) Grant the request in part and issue a written notice denying in part the request;
- (4) Issue a notice indicating that, due to the nature of the request, the City needs an additional ten (10) business days to respond;
or
- (5) Issue a written notice indicating that the public record requested is available at no charge on the City's website.

The FC, or such other individuals as he or she may designate, shall have exclusive authority to deny any FOIA request, entirely or in part.

A. When a request is granted

If the request is granted, in whole or in part, payment in full for the allowable fees associated with responding to the request is required before the record is made available. The FC shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. If the cost of processing a request is \$50.00 or less, the requestor will be notified of the amount due and how the documents can be obtained. If the cost of processing a request is expected to exceed \$50.00 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the City will require a good-faith deposit before processing the request.

In making the request for a good-faith deposit the FC shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best-effort estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the

nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the Act.

B. When a request is denied or denied in part

If the request is denied or denied in part, the FC will issue a Notice of Denial, which will include one of the following:

- (1) An explanation as to why a requested public record is exempt from disclosure;
- (2) A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- (3) An explanation or description of the public record or information within a public record that is separated or deleted from the public record.

Any denial, in part or in whole, shall be accompanied by an explanation of the requestor's right to appeal the denial to the Mayor or Third Circuit Court. Additionally, an explanation of the requestor's post-denial rights, including attorney's fees, costs, disbursements, actual or compensatory damages, and punitive damages shall be included.

The Notice of Denial shall be signed by the FC or his or her designee. If a request does not sufficiently describe a public record, the FC may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment from the requestor. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

C. Requests to inspect public records

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FC is authorized to promulgate rules regulating the manner in which records

may be viewed so as to protect City records from loss, alteration, mutilation or destruction, and to prevent excessive interference with normal City operations.

D. Requests for certified copies

Upon written request, the FC shall furnish a certified copy of a public record at no additional cost to the person requesting the public record.

IV. FEE DEPOSITS

If the fee to provide the requested public records is expected to exceed \$50.00 based on a good-faith calculation, the requestor shall provide a deposit not exceeding one-half ($\frac{1}{2}$) of the total estimated fee.

If a request is from an individual who has not paid the City in full for copies of public records made in fulfillment of a previously granted written request, the FC will require a deposit of one-hundred (100) percent of the estimated processing fee before commencing a search for a public record for any subsequent written request by that person when all of the following conditions exist:

- (1) The final fee for the prior written request is not more than one hundred-five (105) percent of the estimated fee;
- (2) The public records made available contained the information sought in the prior written request and remain in the City's possession;
- (3) The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- (4) Ninety (90) days have passed since the FC notified the individual in writing that the public records were available for retrieval or mailing;
- (5) The individual is unable to show proof of prior payment to the City; and

- (6) The FC has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if:

- (1) The person making the request is able to show proof of prior payment in full to the City;
- (2) The City is subsequently paid in full for the applicable prior written request; or
- (3) Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the City.

If a good-faith deposit is not received within forty-eight (48) days after the City requests the deposit, the request is considered abandoned. After the forty-eight (48) day period lapses, the requestor must file a new request, thereby restarting the process.

V. CALCULATION OF FEES

Consistent with statutory authority, it is the intent of the City to charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record so that its general fund and departmental budgets are not unduly burdened by the costs associated with processing FOIA requests. A fee will not be charged for the search, examination, review, or deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance. In such cases, the City shall specifically identify the nature of any unreasonably high costs.

The following nonexhaustive list of factors shall be used to determine an unreasonably high cost to the City:

- (1) The particular request incurs costs greater than incurred from the typical or usual FOIA request received by the City;
- (2) Volume or size of the public record requested;

- (3) Whether the amount of time spent to search for, examine, review or separate exempt from nonexempt information in the record requested exceeds fifteen (15) minutes;
- (4) Whether the public records are from more than one City department or whether various City offices are necessary to respond to the request;
- (5) The available staffing to respond to the request; or
- (6) Any other similar factors identified by the FC in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- (1) Copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to nonpaper physical media or through the Internet when asked for by the requestor;
- (2) Searching for, locating, and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City;
- (3) A review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City;
- (4) The cost of copying or duplication, not including labor, of paper copies of public records;¹
- (5) The actual cost of computer discs, computer tapes, or other digital or similar media when the requestor asks for records in nonpaper physical media;² or

¹ This may include the cost for copies of records already on the City's website if the requestor asks for the City to make copies.

(6) The actual cost to mail or send a public record to a requestor, including the least expensive form of postal delivery confirmation, as well as the cost of expedited shipping or insurance when such is asked for by the requestor.

Labor costs will be calculated based on the following:

- (1) All labor costs will be estimated and charged in fifteen (15) minute increments, with all partial time increments rounded down;
- (2) If the time involved is less than fifteen (15) minutes, there will be no charge;
- (3) Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work;
- (4) Labor costs will also include a charge to cover or partially cover the cost of fringe benefits;
- (5) The City may add up to fifty (50) percent to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits; and
- (6) Overtime wages will be included in labor costs, but will not be used to calculate the fringe benefit cost;

The cost to provide records via nonpaper physical media when so requested will be based on the following:

- (1) Computer disks, computer tapes, or other digital or similar media will be at the actual and most reasonably economical cost for the nonpaper media;

² This may include the cost for copies of records already on the city's website if you the requestor asks for the City to make copies.

- (2) This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested nonpaper physical media format; and
- (3) In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested nonpaper media and will not accept media from the requestor.

The cost to provide paper copies of records will be based on the following requirements:

- (1) Paper copies of public records made on standard letter eight and a half by eleven (8½ x 11) or legal eight and a half by fourteen (8½ x 14) sized paper will not exceed ten (10) cents per sheet of paper;
- (2) Copies for nonstandard sized sheets of paper will reflect the actual cost of reproduction; and
- (3) The City, when applicable, will utilize double-sided printing when furnishing printed records.

The cost to mail records to a requestor will be based on the following:

- (1) The actual cost to mail public records using a reasonably economical and justified means;
- (2) The City may charge for the least expensive form of postal delivery confirmation; and
- (3) No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FC does not respond to a written request in a timely manner, the City shall reduce the labor costs by five (5) percent for each day the City exceeds the time permitted up to a fifty (50) percent maximum reduction if any of the following applies:

- (1) The late response was willful and intentional;

- the
- (2) The written request conveyed a request for information within first two hundred-fifty (250) words of the body of a letter, facsimile, or email; or
- 442 letter,
- (3) The written request included “freedom of information,” “information,” “FOIA,” “copy,” a recognizable misspelling of such, a reference to MCL 15.231, et. seq., or 1976 Public Act on the front of an envelope or in the subject line of an email, or facsimile cover page.

The FC or his or her designee shall fully note the charge reduction in the Detailed Itemization of Costs Form.

VI. WAIVER OF FEES

Absent a waiver by the FC, in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records. The cost of the search for and copying of a public record may be waived or reduced if, in the sole judgment of the FC, a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public.

In determining whether the general public is primarily benefitted, the FOIA Coordinator shall consider the following nondeterminative factors:

- or
- (1) Whether the public record being disclosed serves the public policy purposes as set forth in Section 1 of the FOIA;
 - (2) Whether the release primarily serves a private or commercial purpose;
 - (3) Whether the release implicates the rights of third persons;
 - (4) Whether the waiver of the fee is in the best interest of the City;
 - (5) The manner in which similar requests have been treated.

VII: INDIGENCE AND DISCOUNTED FEES

The FC will waive the first \$20.00 of the processing fee if the requestor submits an affidavit stating that he or she is indigent and receiving specific public assistance; or, if not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if he or she has previously received discounted copies of public records from the City twice during the calendar year, or if the requestor seeks information in connection with other persons who are offering or providing payment to make the request. The affidavit shall be a sworn statement made under penalty of perjury.

The FC may make a Fee Waiver Affidavit Form available for use by the public. Nonprofit organization advocating for developmentally disabled or mentally ill individuals The FC will waive the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the State to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
 - o Is made directly on behalf of the organization or its clients.
 - o Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.
 - o Is accompanied by documentation of its designation by the State

VIII. APPEAL OR DENIAL OF A PUBLIC RECORD REQUEST

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal by filing an appeal of the denial with the Office of the Mayor. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The City FOIA Appeal Form (To Appeal a Denial of Records) may be used. The Mayor is not considered to have received a written appeal until the first business day following submission of the written appeal if the appeal is not received during a business day.

Within ten (10) business days of receiving the appeal the Mayor will respond in writing by:

- (1) Reversing the disclosure denial;
- (2) Upholding the disclosure denial;
- (3) Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- (4) Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the Mayor shall respond to the written appeal.

The Mayor shall not issue more than one (1) notice of extension for a particular written appeal. Any exemption to the release of requested public records shall be narrowly construed and the burden shall be upon the FC to demonstrate that the denial of information is justified and should be upheld. Irrespective of whether a requestor submitted an appeal of a denial to the Mayor, he or she may file a civil action in Third Circuit Court within one hundred-eight (180) days after the City's final determination to deny the request. If a court that determines a public record is not exempt from disclosure, the court shall award the appellant reasonable attorney's fees, if applicable; costs; and disbursements. If the court determines that the appellant prevails only in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines that the City has arbitrarily and capriciously violated the Act by refusing all copies of a public record or delaying the disclosure thereof, the court shall award appellant punitive damages of \$1,000.00.

IX. APPEAL OF AN EXCESSIVE PROCESSING FEE

If a requestor believes that the fee or good-faith deposit charged by the City to process a request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the Mayor. The appeal must be in writing, specifically state the word "appeal," and identify how the required fee exceeds the amount permitted. The Mayor is not considered to have received a written appeal until the first business day following submission of the written appeal if the appeal is not received during a business day.

Within 10 business days after receiving the appeal, the City Manager will respond in writing by:

- (1) Waiving the fee;
- (2) Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- (3) Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- (4) Issuing a notice detailing the reason or reasons for extending not more than 10 business days the period during which the Mayor will respond to the written appeal.

The Mayor shall not issue more than one (1) notice of extension for a particular written appeal. When the Mayor reduces or upholds the fee, the determination must include a certification from the Mayor that the statements in the determination are accurate and that any reduced fee amount complies with the City's publicly available procedures and guidelines and Section 4 of the Act. Within forty-five (45) days after receiving notice of the Mayor's determination of an appeal, the requesting person may commence a civil action in Third Circuit Court for a fee reduction. If a civil action is commenced against the City for an excess fee, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless one of the following applies:

- (1) The City does not provide for appeals of fees;
- (2) The Mayor failed to respond to a written appeal as required; or
- (3) The Mayor issued a determination to a written appeal.

If a court determines that the City required a fee that exceeded the amount permitted under its publicly available procedures and guidelines or Section 4 of the Act, the court shall reduce the fee to a permissible amount. If the requesting person prevails in court by receiving a reduction of fifty (50)

percent or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages. If the court determines that the City has arbitrarily and capriciously violated the Act by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.00.

**X: CONFLICT WITH PRIOR FOIA POLICIES AND PROCEDURES;
EFFECTIVE DATE**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FC subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FC is controlling. To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FC pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control.

The FC is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to the Act, provided that such modifications and rules are consistent with State law. The FC shall inform the City Council of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines are currently in effect.

XI. APPENDIX OF FORMS

- (1) Request for Public Records
- (2) Notice to Extend Response Time
- (3) Notice of Denial Form

- (4) Detailed Cost Itemization Form
- (5) Appeal of Denial of Records Form
- (6) Appeal of Excess Fee Form