



COUNTY OF MACOMB FREEDOM OF INFORMATION ACT POLICY

1. **Availability of Procedures and Guidelines.**
 - a. Online. This policy can be found on Macomb County's website: www.macombgov.org
 - b. Hard Copy. Visitors may request a free paper copy of this policy at the Office of the Corporation Counsel, 1 South Main Street, 8th Floor, Mount Clemens, Michigan.
2. **General Considerations.** The County of Macomb is committed to replying to requests for public records in accordance with the Michigan Freedom of Information Act (FOIA), MCL 15.232 et. seq., as periodically amended by the State of Michigan, and as interpreted by the courts.
 - a. The Act applies to the County and its component departments, and agencies (the County). The Act does not apply to the Macomb Circuit Court, the 42nd District Court, Judges, or the Macomb County Clerk when acting in the capacity of Clerk to the Circuit Court.
 - b. County records are those which are created or in the possession of the County. All County records are presumed to be public records; disclosure is the rule and non-disclosure is the exception. Computer software is not subject to disclosure.
 - c. The Act does not generally require the County to make a compilation, summary, or report of information which does not otherwise exist.
 - d. The Act does not generally require the County to create a new public record which does not otherwise exist.
 - e. A requestor has the right to inspect, copy, or receive copies of public records to the extent those records are not subject to an exception recognized by law, MCL 15.234.
3. **FOIA Coordinator.** The Office of the Corporation Counsel shall be the FOIA Coordinator for the County of Macomb, its departments, agencies, and the Board of Commissioners. The FOIA Coordinator will keep a copy of all written FOIA requests on file for at least one year.
4. **FOIA Request.** An individual, corporation, or other legal entity may make a FOIA request. Prisoners serving a term of confinement in a state, county, or federal facility may not make a FOIA request. A FOIA request must be in writing, and must sufficiently describe the records to enable the County to search for and retrieve the requested records. FOIA requests may be made by mail, email, or fax directed to the County department that may possess the requested records. That department will then immediately assemble the records and forward them along with the request to the County's FOIA Coordinator for response.

5. **FOIA Response.**

- a. The County will respond to a FOIA request within five (5) business days after the request is received, unless (1) the requestor agrees in writing to a different response time, or (2) the County provides written notice to the requestor that it is unilaterally extending the response period for a single ten business day period.
- b. An electronically transmitted FOIA request (e.g., fax or email) is not considered to be received until one day after its transmission date. An electronically transmitted FOIA request delivered to a spam/junk mail folder is not considered to be received until one business day after the FOIA Coordinator becomes aware of the request. The FOIA Coordinator will maintain a record of the date on which the request reached the spam/junk mail folder and the date on which the FOIA Coordinator first became aware of it.
- c. The County's response may grant, deny, or grant in part/deny in part; failure to affirmatively respond constitutes a denial
- d. An affirmative denial will (1) explain the basis for the denial if predicated on an exception or statute, and cite the specific legal authority relied upon, (2) if denied because the requested record does not exist, or does not exist as identified, certify that the requested record does not exist, or does not exist as identified, (3) explain any deletions or redactions, and (4) advise that the requesting party has further rights as provided under MCL 15.235.
- e. If the requested records are available on the County's website, the response will direct the requestor to the specific web location of the records. No fee will be charged.

6. **Allowable Fees.** The County may generally charge a fee for the actual cost of search, retrieval, copying, redaction, and mailing public records in response to a FOIA request as provided by law.

- a. Deposit for Costs. The County may require deposit if the fee will exceed \$50.00. The deposit may not exceed fifty per cent (50%) of the total fee. The County will employ its best efforts to accurately estimate the total fee for the purpose of determining the deposit amount.
- b. Labor. Fees charged for labor involved in search, retrieval, copying, and redaction shall be calculated in fifteen (15) minute increments, rounded down, of the hourly wage of the lowest paid qualified employee able to complete the task.
- c. Materials and Media. Fees charged for materials shall be charged at ten cents (\$0.10) per page for paper, the actual and most reason cost of non-paper digital media (e.g., discs, flash drives, memory cards), and the actual cost of mailing calculated at the least expensive method available.
- d. Statement of Costs. Fees will be itemized with a separate accounting for (1) search, retrieval, and copying, (2) redaction of information falling within a statutory exception or other legal prohibition, (3) scanning for production in digital format, including employment of a contractor for such purposes.

7. **Fee Waiver or Reduction.**

- a. Fees may be waived if a waiver is in the best interest of the public.
- b. Fees may not be charged, or may be charged only at a reduced rate, for requestors who are indigent or receiving certain public assistance, or for requestors which are charitable organizations.
- c. Fees may be reduced by 5% per day up to a maximum of 50% if the County's response is untimely.

8. **Effect of Non-Payment.** In the event (1) a requestor does not fully pay the fees due for records the County makes available on time subject to payment, (2) 90 days have passed since the County provided the requestor written notice that the records are available, (3) the County provided an estimate for the request, and (4) the final fee did not exceed 105% of the estimate, the County may, for the following 365 days, require a 100% estimated fee deposit before the County commences work to respond to a subsequent request made by the non-paying requestor. The 100% deposit requirement may be stricken in the event the requestor subsequently pays in full the fee due for the earlier request.

9. **FOIA Appeals.**

- a. **Denial.** Denial of a FOIA request may be appealed to the County Executive. An appeal must be submitted in writing, clearly identifying that it is an "Appeal" and it must identify the reason(s) why the denial should be reversed. Within ten days after receiving the appeal, the County Executive will take one of the following actions: (1) grant the appeal, (2) deny the appeal, (3) grant the appeal in part and deny the appeal in part, or (4) issue a written notice extending the deadline for the appellate decision for an additional ten business days. Only one extension may be issued. Alternatively, a requestor may also appeal a denial by the FOIA Coordinator or the denial of an appeal by the County Executive by commencing a civil action in the Circuit Court.
- b. **Amount of Costs.** The amount of the fees charged by the County may be appealed to the County Executive. An appeal must be submitted in writing, clearly identifying that it is an "Appeal" and it must identify the reason(s) why the fee charged exceeds the limits allowed by law. Within ten days after receiving the appeal, the appellate authority will take one of the following actions: (1) waive the fee, (2) reduce the fee and issue a written determination reflecting the specific basis for charging the remaining fee, (3) deny the appeal and issue a written determination reflecting the manner in which the fee is authorized by law, or (4) issue a written notice extending the deadline for the appellate decision for an additional ten business days. Only one extension may be issued. A requestor may also appeal the denial of a fee appeal by commencing a civil action in the Circuit Court.

Date: June 13, 2019



Mark A. Hackel
County Executive

