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EXECUTIVE ORDER NO. 15

**TO: ALL BOARDS, COMMISSIONS, DEPARTMENT DIRECTORS,
CITY COUNCIL MEMBERS, AND THE CITY CLERK**

**SUBJECT: PROCEDURES AND GUIDELINES FOR CHARGING FEES
UNDER THE MICHIGAN FREEDOM OF INFORMATION
ACT**

DATE: DECEMBER 26, 2001

The Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, was enacted to promote the public policy that:

all persons, except those persons incarcerated in state or local correctional facilities, 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 public employees, consistent with [the] act. The people shall be informed so that they may fully participate in the democratic process. MCL 15.231(2).

MCL 15.232(c) defines a person to mean an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity but does not mean one who is serving a sentence of imprisonment in a state or county correctional facility in Michigan or any other state, or in a federal correctional facility.

This City is firmly committed to the purpose of the FOIA. Therefore, it has been the City's policy to treat all written requests for records that are in the possession of City departments and agencies as FOIA requests.

Nevertheless, the laudatory goals of the FOIA entail significant burdens on the time and resources of City departments and agencies, and their officials and employees. During Fiscal Year 2000-2001, City departments and agencies responded, through the Law Department, to upwards of 2,500 FOIA requests, and it is anticipated that the number of FOIA requests will continue to increase with each passing fiscal year. Most FOIA requests are routine, and do not consume a significant measure of time or manpower. Often, however, FOIA requests entail the expenditure of substantial time and labor by City officials and employees to identify, locate, and produce copies of the requested records.



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Mindful of the burdens that attend requests for public records, the FOIA permits public bodies to charge a fee for the actual cost of duplicating and mailing records which are provided in response to a request. MCL 15.234(1). The FOIA also provides that a fee may be charged for the labor expended in searching for, examining, reviewing, and deleting and separating information that is exempt from disclosure, where the labor costs are unreasonably high for a particular request. MCL 15.234(1) and (3). However, the FOIA requires the establishment and publication of procedures and guidelines governing the assessment of those labor fees. MCL 15.234(3)

Up to now, most persons who submit FOIA requests have been charged for only the actual mailing and copying costs for records provided, but have not been assessed the cost of the labor expended in gathering and providing those records, which, typically, far exceeds the copying and mailing costs. Thus, City departments and agencies have too often – and unfairly – been constrained to shoulder unreasonably high financial and manpower burdens in complying with the FOIA.

This Order is accompanied by Procedures and Fees for Freedom of Information Act Requests Made to the City of Detroit, and a Labor Cost Assessment Form, both of which were prepared at my direction by the Law Department. All City departments and agencies are to implement these procedures and fees, and to begin using the Labor Cost Assessment Form. In addition, pursuant to MCL 15.236(1), the Supervising Assistant Corporation Counsel of the Law Department Freedom of Information Section is designated as the Freedom of Information Act Coordinator for the City of Detroit, and as such, shall be responsible for processing all FOIA requests submitted to the City departments and agencies.

To take advantage of these procedures for the recovery of labor costs where appropriate, it is crucial that all City departments and agencies move expeditiously to provide the Law Department with complete and accurate information. Accordingly, the following protocol shall be observed:

- All FOIA requests that are received by City departments and agencies are to be handled by the Law Department Freedom of Information Section.
- When a person inquires where to submit an FOIA request, the City department or agency shall direct the person to submit the request to the Supervising Assistant Corporation Counsel, Freedom of Information Section, Law Department, either by mail at 1650 First National Building, Detroit, Michigan 48226, or by facsimile at (313) 225-5505.
- Any City department or agency that receives a request directly from a person shall immediately transmit the request, by facsimile, to the Supervising Assistant Corporation Counsel of the Law Department Freedom of Information Section, at (313) 224-5505.



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- Upon request from the Law Department Freedom of Information Section, a department or agency shall search, gather, and, when possessing records that are responsive to the request, provide such records to the Supervising Assistant Corporation Counsel of the Law Department Freedom of Information Section.
- When the records are transmitted to the Law Department Freedom of Information Section, they shall be accompanied by the completed Fee Assessment Form, which documents the labor expended in locating and copying the records, and certifies the hourly wage, including fringe benefits, of the lowest-paid employee capable of retrieving the records.
- The Law Department Freedom of Information Section will review all records, will determine whether any FOIA exemptions apply, and, as appropriate, will separate or redact information that is exempt from disclosure.
- Based on the information provided by the department or agency supplying the records, the Law Department Freedom of Information Section shall determine whether a particular request entails unreasonably high labor costs, and calculate the appropriate labor fee.
- The Law Department Freedom of Information Section will prepare the City's responses to all FOIA requests.

By working together with the Law Department Freedom of Information Section, and adhering to these procedures and guidelines, City departments and agencies will be able to better serve not only their interests, but also the interests of the People of the City of Detroit, in keeping with the purpose of the FOIA.

This Executive Order is effective this date.


Dennis W. Archer
Mayor



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PROCEDURES AND FEES
FOR FREEDOM OF INFORMATION ACT REQUESTS
MADE TO THE CITY OF DETROIT

These procedures and fees are to be followed by all City departments and agencies, and their officials and employees, in concert with the Law Department Freedom of Information Section, when complying with Freedom of Information Act requests made to the City of Detroit:

1. The City of Detroit will charge fees for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record. Pursuant to MCL 15.232(e) and (h), a public record is any writing prepared, owned, used, in the possession of, or retained by any City department or agency in the performance of an official function, including photographs, tapes, and diskettes but excluding computer software.
2. The City of Detroit will assess the actual incremental cost of copying public records based on the most economical means of duplication available.
3. The City of Detroit will charge for actual mailing costs at the appropriate Postal Service rate.
4. Where a request would result in unreasonably high costs to search for, review, redact or separate, and copy a public record, the City of Detroit will charge a fee for the cost of labor expended in, searching for, reviewing, and deleting or separating exempt from nonexempt information, and photocopying. The City of Detroit will identify in writing the nature of the unreasonably high costs entailed by a request. Pursuant to MCL 15.234(3), labor will be charged at the rate equal to the hourly wage, including fringe benefits, of the lowest-paid employee capable of retrieving the information necessary to comply with a request. The labor rate will vary according to the documents requested, and the departments and agencies from which the information is sought.
5. If the total fee estimated exceeds fifty dollars (\$50.00), the City of Detroit will require a good-faith deposit in advance, as permitted by MCL 15.234(2). The deposit shall not exceed one-half (½) of the total fee estimated. The City of Detroit will notify the requesting party in writing of the estimated cost.
6. A requesting party may choose to examine records on site during normal business hours, MCL 15.233(3), particularly in cases involving a large volume of documents. Such arrangements shall be made with the Law Department Freedom of Information Section.
7. Costs up to twenty dollars (\$20.00) will be waived for parties who submit an affidavit indicating that they are on public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. MCL 15.234(1).
8. Charges may be waived or reduced where the City of Detroit deems a request to be in the public interest. MCL 15.234(1).

CITY OF DETROIT
FREEDOM OF INFORMATION ACT
LABOR COST ASSESSMENT FORM

Please provide the following information to assist the Law Department Freedom of Information Section in determining the appropriate labor cost to be charged for responding to the accompanying Freedom of Information Act (FOIA) request regarding

_____:

1. The job classification and hourly wage of the **LOWEST PAID EMPLOYEE CAPABLE OF RETRIEVING THE INFORMATION NECESSARY TO COMPLY WITH THE REQUEST:**

Classification: _____

Hourly Rate: _____

2. The name of, and time spent by, any official or employee who searched for, reviewed, or copied information necessary to respond to the request:

Print Name

Time Spent Searching for/
Reviewing/Copying Records

Please fully complete and return this form, with the requested records, to the Law Department Freedom of Information Section. Thank you for your assistance and cooperation.

Dated: 12/26/01