

**PUBLIC RECORDS**

The District's public records, as defined under the Freedom of Information Act (FOIA), are available for public inspection and/or copying in accordance with the following administrative guidelines. Exemptions are specified in MCL 15.243.

**Designation of FOIA Coordinator**

The Superintendent, as the District's Chief Administrative Officer, is the District's FOIA Coordinator. The FOIA Coordinator may designate others to act on his/her behalf in accepting and processing FOIA requests. Therefore, the Superintendent designates the Administrative Assistant to the Superintendent and the Board of Education to serve as his/her designees.

**Requests for Public Records and District Response**

The following procedures shall be followed in connection with requests to inspect and secure copies of School District records:

- A. Requests to inspect or secure copies of records shall be submitted in writing to the main office of the School District. The writing must sufficiently describe the public record so as to make it identifiable. A written request made by facsimile, electronic mail, or other electronic transmission is not considered received by the FOIA Coordinator until one (1) business day after the electronic transmission is made.
- B. Unless otherwise agreed to in writing by the individual making the FOIA request, the District will respond to a FOIA request within five (5) business days after the public body receives the request by doing one of the following:
  1. Granting the request.
  2. Issuing a written notice to the requesting person denying the request.
  3. Granting the request in part and issuing a written notice to the requesting person denying the request in part.
  4. Issuing a notice extending for not more than ten (10) business days the period during which the public body shall respond to the request.
- C. If the FOIA Coordinator or his/her designee knows or has reason to know that all or a portion of information requested in a written request is available on the District's website, the FOIA Coordinator or designee will provide the specific webpage address where the information is available in its written response. The District will not charge a fee for records available to the public on its website, unless the requestor stipulates that the records be provided in a format other than through the publicly available website.

If a verbal request for information is for information that the FOIA Coordinator or his/her designee believes is available on the District's website, the FOIA Coordinator or designee shall, where practicable and to the best of his/her knowledge, inform the requestor about the District's pertinent website address.

- D. With respect to records which are determined to be available, the FOIA Coordinator will direct the requester to the place where the requested records may be inspected and will arrange for the

preparation and certification of copies upon tender of any required fee. The FOIA Coordinator will establish a time and date for inspection and copying of the requested records.

- E. Records may be inspected only at the Office of the Superintendent or at such other place as may be designated by him/her. No record may be removed from such location. A member of the staff must be present throughout the inspection and copying of such record.
- F. Requests by mail for copies of available records may be addressed to the Superintendent and will be honored upon payment of any required fee, provided the requester and the record of which a copy is requested are sufficiently identified to make compliance practicable.
- G. The District is responsible for providing records of the District but not for providing additional information that may be related to a record but is not part of a record. Nor is the District required to create a record if none exists.
- H. Personnel records are to be considered public records of the District other than those considered to be confidential by law. Prior to releasing personnel records, the FOIA Coordinator will attempt to notify any employee whose personnel records have been requested.
- I. If the District denies a request for a public record in whole or in part, it is a public body's final determination to deny the request or portion of that request. The District's written notice shall be signed by the individual responsible for the denial of the request and shall contain:
  - 1. An explanation of the basis under the FOIA or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
  - 2. A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the District, if that is the reason for denying the request or a portion of the request.
  - 3. If all or part of a requested public record was determined exempt from disclosure under MCL 15.243, and therefore not disclosed pursuant to MCL 15.244, a description of that record or portion of a record that was separated and excluded.
  - 4. A full explanation of the requesting person's right to do either of the following:
    - a. Submit a written appeal to the District Board of Education (the "Board") that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial. The Board shall act on the appeal within ten (10) days or issue a notice of extension of ten (10) days in which to make the decision.
    - b. Seek judicial review by commencing an action in Lapeer Circuit Court to compel the District's disclosure of the public records.
  - 5. Notice of the right to receive attorneys' fees and damages if, after judicial review, the court determines that the District has not complied with the statute and orders disclosure of all or a portion of a public record.
- J. Failure to respond to a FOIA request pursuant to Paragraph B, above, constitutes the District's final determination to deny the request if either of the following applies:

1. The failure was willful and intentional.
2. The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

## Location and Time

Records shall be made available at the Superintendent's Office, during the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, with the exception of the holidays when District schools are closed.

## Fees

As permitted by MCL 15.234(1), the District shall charge a fee to cover the costs of responding to a FOIA request, except as provided in the Fee Reduction section below. The District's Standard Form for the Detailed Itemization of Fees shall be used to determine the proper fee, which will be calculated by totaling the following costs:

- A. Labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request.
  1. The District shall not charge a fee for such costs unless failure to charge a fee would result in unreasonable high costs to the District because of the nature of the request in the particular instance, and the District specifically identifies the nature of these unreasonably high costs.
  2. If a fee is charged for this cost, the District shall not charge more than the hourly wage of the District's lowest-paid employee capable of searching for, locating, and examining the public records regardless of whether that person is available or who actually performs the labor.
  3. The District shall estimate and charge labor costs for this particular cost in increments of 15 minutes, with all partial time increments rounded down.
- B. Labor costs, including necessary review, associated with the separating and deleting of exempt information from nonexempt information.
  - a. The District shall not charge a fee for such costs unless failure to charge a fee would result in unreasonable high costs to the District because of the nature of the request in the particular instance, and the District specifically identifies the nature of these unreasonably high costs.
  - b. If a fee is charged for this cost, the District shall not charge more than the hourly wage of the District's lowest-paid employee capable of separating and deleting exempt information from nonexempt information regardless of whether that person is available or who actually performs the labor.
  - c. The District shall estimate and charge labor costs for this fee in increments of 15 minutes, with all partial time increments rounded down.

- C. For public records provided to the request on nonpaper physical media, the actual and most reasonable economical cost of the computer discs, computer tapes, or other digital or similar media.
- D. For paper copies, \$0.10 per sheet of paper for copies made on 8½ by 11-inch paper or 8½ by 14-inch paper.
- E. Labor costs directly associated with duplication or publication, including making paper copies and digital copies.
  - 1. The District shall not charge more than the hourly wage of the District's lowest-paid employee capable of necessary duplication nor publication, regardless of whether that person is available or who actually performs the labor.
  - 2. Labor costs will be estimated and charged in time increments of the District's choosing; however, all partial time increments will be rounded down.
- F. Actual cost of mailing, by the least expensive form of postal delivery confirmation
  - 1. Unless requestor stipulates to expedited shipping or insurance.

### Fee Reductions

#### A. Indigency.

- 1. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by an individual who receives public assistance or proves indigence, provided:
  - a. The individual submits an affidavit stating –
    - i. he/she is indigent and receiving specific public assistance, or, if not receiving public assistance, the individual states facts showing inability to pay the cost because of indigency;
    - ii. his/her request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
  - b. the individual has not previously received discounted copies of public records from the District, pursuant to this policy, twice in the same calendar year.
- 2. If the requestor is ineligible for a discount based on indigency, the District shall inform the requestor specifically of the reason for ineligibility in the District's written response to the individual's FOIA request.

- B. **Advocacy and Protection Organization.** A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities 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,<sup>1</sup> or their successors, if the request meets all of the following requirements:

1. It is made directly on behalf of the organization or its clients.
  2. It is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, MCL 330.1931.
  3. It is accompanied by documentation of its designation by the state, if requested by the public body.
- C. These fee reductions shall be fully noted on the District's Standard Form for the Detailed Itemization of Fees, which will be provided by the District in its response to an individual requesting records.
- D. The District shall keep a record of fees reduced for all individuals and organizations, though such fees will not be charged except those in excess of the yearly maximum.
- E. Revenue from fees paid for processing a FOIA request shall be deposited monthly in the general fund of the District.
- F. These fee reduction provisions do not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

### Deposits

- A. Good Faith Deposit.** If the estimated cost for processing an individual's FOIA request exceeds \$50.00, the FOIA Coordinator or his/her designee shall require a good faith deposit of one-half of the estimated fee before processing the request.
- B. Detailed Itemization Required.** The District's request for a deposit shall include a detailed itemization, provided on the District's Standard Form for the Detailed Itemization of Fees, along with a best efforts estimate by the District regarding the time required for the District to provide the public records to the requestor.
- C. Previous Failure to Pay.** If the District has granted and fulfilled a written request from an individual under the FOIA and has not been paid in full the total amount due pursuant to MCL 15.234(1), the District will require a deposit of up to 100% of the estimated fee before the District begins a full public record search for any subsequent written request from that individual, if all of the following apply:
1. The final fee for the prior written request was not more than 105% of the estimated fee.
  2. The public records made available contained the information being sought in the prior written request and the records are still in the District's possession.
  3. The public records were made available to the individual, subject to payment, within the time frame estimate described above in Paragraph 2 and required under MCL 15.234(7).

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<sup>1</sup> The Michigan Protection & Advocacy Service, Inc. currently serves both of these functions.

4. 90 days have passed since the District notified the individual in writing that the public records were available for pickup or mailing.
  5. The individual is unable to show proof of prior payment to the District.
  6. The District calculates a detailed itemization, as required under MCL 15.234(4), that is the basis for the current written request's increased estimated fee deposit.
- D.** The District shall not require an increased estimated fee deposit from an individual as described above in Paragraph C if any of the following apply:
1. The individual is able to show proof of prior payment in full to the District.
  2. The District is subsequently paid in full for the applicable prior written request.
  3. 365 days have passed since the individual made the written request for which full payment was not remitted to the District.

**Exempt Records**

Exempt records shall include, but are not limited to, the following:

- A. Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- B. Records or information exempt from disclosure by other statute.
- C. Information that would prevent compliance with the Family Educational Rights and Privacy Act (FERPA).
- D. Exempt information furnished by another public body.
- E. Information or records subject to attorney-client privilege, the physician-patient privilege, or the psychologist-patient privilege.
- F. A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.
- G. Appraisals of real property to be acquired by the District, until an agreement is entered into or three years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- H. Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- I. Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

## **Suspending Destruction**

Upon receiving a FOIA request, the District will suspend destruction of all relevant records if an investigation or litigation has commenced.

## **Public Availability of Policies and Written Public Summary**

The District shall make these FOIA policies (which include the District's Standard Itemized Fee Form) and the District's written public summary available to the public by:

- A. Posting the policies and public summary on the District's website;
- B. Providing free copies of the policies and public summary, upon request, to visitors to the District's office; and
- C. Including the specific webpage address(es) where the policies and written public summary are available for public viewing in each District response to a written request for public records under the FOIA.

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