

**CITY OF MONTROSE
FREEDOM OF INFORMATION ACT (FOIA) POLICY
(10-13-2011)**

I. Purpose

The Michigan Freedom-of-Information-Act, Public Act 442 of 1976, as amended, requires the City of Montrose to disclose, upon request, all non-exempt public records that are covered by this statute.

This policy was established by a resolution adopted by the City Council of the City of Montrose at their regular meeting on October 13, 2011. The policy provides specific procedures that designated city officials are to consistently follow when processing a Freedom-of-Information-Act request.

Pursuant to this law, hereinafter referred to as the "Act," the City of Montrose is authorized to charge a fee for providing a public record and a fee for examining, reviewing, separating and deleting exempt from non-public records, subject to specific limitations and restrictions.

In addition, there is no fee for 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 of the State of Michigan compiled laws.

II. Definitions

Act means the Michigan Freedom-of-Information-Act, Public Act 442 of 1976, as amended.

City means the City of Montrose and its duly constituted agencies, authority, departments, boards, bureaus, commissions, committees, or any municipal corporation or any other body exclusively created by the City of Montrose.

City Council or Montrose City Council shall mean the elected governing municipal legislative body for the City of Montrose, a municipal corporation under State of Michigan laws.

City Clerk means the City Manager appointed City Clerk in accordance with the provisions contained within the adopted Charter for the City of Montrose.

City Manager means the City Council appointed City Manager in accordance with the provisions contained within the adopted Charter for the City of Montrose.

Field name means the label or identification of an element of a computer data base that contains a specific item of information, and includes, but is not limited to, a subject heading such as a column header, data dictionary or record layout.

FOIA Coordinator means the City Clerk, is hereby designated by the Montrose City Council, and is responsible for accepting and processing requests as delineated in this policy and the Act, is also responsible for denials of requests, and those persons designated by the City Clerk in accordance with the provisions of the Act. In the absence of the City Clerk, another employee or official will be designated by the FOIA Coordinator to act in accepting and processing written FOIA requests for the City's nonexempt public records and granting or denying requests received.

Person means an individual, corporation, limited liability company, partnership, firm organization, association, governmental entity, committee, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

Public Record means a writing which is prepared, owned, used, in the possession of, or retained by the City in its performance of an official function from the time it is created and otherwise defined by the Act. Public record does not include computer software.

Software means a set of statements or instructions that when incorporated in a machine usable medium capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

Unusual circumstances means causing one or a combination of the following: the need to search for, collect, or appropriately examine or review a voluminous amount of public records to a single request, or the need to collect public records from numerous locations, facilities, or other establishments which are apart from the office of the City Clerk.

Writing means handwriting, typewriting, printing, photostating, photographing, photocopying, e-mailing, and every other means of recording, including letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

Written request means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

*Where not otherwise defined, the words and phrases contained in the Policy shall have the meaning given to them, if any, by the Act.

III. General Policy

1. The policy of the City of Montrose is to provide and encourage public access and inspection to all nonexempt public records by all persons in a fair and uniform

manner independent of the identity of the requesting person while utilizing the most economical means available for either providing for examination or copying nonexempt public records along with fair and uniform fees established for all public services rendered under the Act.

2. Upon request, a person will be provided with a reasonable opportunity to examine the public records of the City during usual days and hours for the City Offices Building.
3. Upon written request, all nonexempt public records of the City of Montrose will be made available for inspection and/or a copy provided pursuant to the requirements of the Freedom-of-Information Act and retention of all public records shall be retained strictly according to the Records Retention and Management Schedule as approved by the Montrose City Council.
4. The request must be in writing and sufficiently describe the specific public record to enable the FOIA Coordinator to identify the requested public record.
5. A written request to review or obtain copies of non-exempt records may be made in person, transmitted electronically or mailed to the City Offices Building, P.O. Box 348, 141 Parkway Drive, Montrose, Michigan 48457. The City's fax number is (810) 639-6125 and the email address is cityofmontrose@cityofmontrose.us.
6. A person submitting a written FOIA request to the City of Montrose FOIA Coordinator will be furnished a reasonable opportunity for inspection and examination of non-exempt public records and be furnished reasonable facilities for making memoranda, abstracts, or copies of non-exempt public records during usual business hours.
7. Persons with special needs should contact the FOIA Coordinator to insure that arrangements for special needs or reasonable facilities are prepared.
8. The City of Montrose, under the Act, may make reasonable rules necessary to protect its public records from loss, unauthorized alteration, mutilation, or destruction and to prevent excessive and unreasonable interference with the discharge of its functions. Original public records will not be released from the City as a fiduciary responsibility to protect and secure public records from potential loss or damage.
9. No need is needed to monitor persons reviewing copies of public records on file elsewhere. However, monitors must be assigned to insure the integrity of materials when persons reviewing the originals or public records if they cannot be reasonably reproduced with copies. At the end of the monitoring period, the person will pay all labor costs incurred for monitoring, searching, reviewing and any other tasks involved in the process of responding to the written FOIA request.
10. A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid up to six (6) months, at the request of the subscriber, and will be renewable upon request. Copy fees and transportation charges incurred for future issuances of regularly published public records will be arranged with the FOIA Coordinator. The FOIA Coordinator will sign the request for to confirm that the public record is one that is regularly published. The City requires that an escrow deposit of thirty-five dollars (\$35.00) be paid when a FOIA request for copies of regularly

published public records is made by the FOIA Coordinator. The City will charge against the escrow for the costs of copying and transportation of the public records requested. There will be no labor charges since this must be a public record routinely developed. An account sheet of the number of copies and costs for transportation will be maintained by the FOIA Coordinator. If the escrow deposit is reduced to five dollars (\$5.00) or less prior to the expiration of the request, the FOIA Coordinator will communicate in writing to the person for an additional deposit or termination of the request.

11. Records of information, public or otherwise, specifically described and exempted from disclosure by statute or order from a court of competent jurisdiction.
12. If a public record contains material which is not exempt as well as material which is exempt from disclosure according to law, the City will separate the exempt and nonexempt material and make the nonexempt material available for examination and copying. The labor costs associated with such deletions and separation of public record procedures shall be assessed as a fee and charge in processing the FOIA request.
13. In designing a public record the City will, to the extent practicable, facilitate a separation of exempt from nonexempt information.

IV. Rights and Obligations of the City

1. The Act does not require the City or the FOIA Coordinator to make a compilation, summary, report of information, or create a new public record. This exemption includes analyzing, compiling, or summarizing existing public record information into a new format.
2. The City, including all its various public bodies (including the Montrose City Council), employees nor the FOIA Coordinator is obligated to provide answers to oral or written questions.
3. The FOIA Coordinator or other custodian of a public record will furnish, upon written request from a person, a certified copy of a public record.
4. The FOIA Coordinator shall keep a copy of all written requests on file to the public for no less than one (1) year.
5. The Montrose City Council will adopt, by resolution, a schedule of fees and charges for providing copies of public records entitled the FOIA Fees and Charges Schedule worksheet.
6. All FOIA requests submitted pursuant the Act and this Policy will be subject to fees and charges adopted by the Montrose City Council, except any fees otherwise provided by law. Costs for copying (including paper costs, machine costs, life of machine, supplies of machines including toner, powder, drums, et.al), duplication (for photographs, videotapes, audio tapes, etc.), examination, review, postage, handling shall also be charged as applicable and shall include the exact postage or shipping costs, as well as the cost for envelopes or other containers used for delivering the public records requested, along with labor costs incurred as measured by incremental use of time at an interval rate of fifteen (15) minutes. The City fees and charges are for the costs involved with searching for, examining, reviewing a public record, and the deletion and

separation of exempt from nonexempt information, volume of records requested, complexity of searching for, examining, reviewing a public record, deletion and separation of exempt from nonexempt information, the need to search for, examine, and review public records from different agencies, authorities, departments, board, commissions, committees or created municipal corporations or any other body exclusively created by the City of Montrose, anticipated hours of labor, the availability of staffing for responding to the request, and any other unusual factors later identified. Charges for labor costs shall be determined by using the hourly wage of the lowest paid City employee capable and presently available at the time of retrieving, processing and copying the records requested. The cost of labor includes the employee's salary/wage, fringe benefits, and employment related taxes.

7. The person making a FOIA request is responsible for payment of the fees and charges associated with the City responding to a FOIA request prior to inspecting or receiving copies of the specific public records requested. Costs assessed for providing a public record search for inspection and any copying of a public record is according to the FOIA fees and charges schedule worksheet to cover the costs otherwise would be an unfair subsidy burden paid by the general treasury of all taxpayers instead of the person making the FOIA request and therefore creating the corresponding additional cost burden to the financial resources of the City treasury.
8. If the City is ordered by a court of competent jurisdiction to deliver or make public records available and the requesting person has not made payment at the time, the City is entitled to collect from the requesting person the allowed cost of processing the request and any attorney fees and costs incurred necessary for the collection if the person does not pay the cost within thirty (30) days of the public records being made available or when they are sent by the City.
9. The FOIA Coordinator and/or the City Manager may prepare and submit to the Montrose City Council for its approval additional rules to regulate the time and manner in which records are reviewed, to protect the records and prevent excessive interference with the City's normal operations of serving the general public and to perform such tasks either required by law or exercise reasonable administrative functions necessary for the City and its employees to perform their duties and responsibilities in serving and protecting the citizens and taxpayers of the City of Montrose as a municipal corporation.
10. The City has limited in-house capabilities for copying most communication media. If a person requests that copies be made of these, colored, or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs.
11. If an employee of the City is required to deliver and/or transport the public records and/or copies of public records, the labor hours, measured in fifteen (15) minutes time intervals, spent and applicable mileage (at City rates) will also be applied to the charges of the person requesting the public records.
12. The City may hire third parties to process or assist in processing the request which will also be applied to the assessed charges of the person requesting the public records.

V. Procedures for Processing a FOIA Request

1. All FOIA requests for public records must be written and sent to the City Clerk as the designated FOIA Coordinator for the City of Montrose.
2. If a request is made in person, the person making the request must complete and sign a Freedom-of-Information-Act form.
3. If the request is made by mail or electronically, a Freedom-of-Information-Act must be completed by the City Clerk or another employee in the City Offices Building during regular work hours. An employee in the city Offices Building who receives a FOIA request for a public record will promptly forward that request to the FOIA Coordinator, the City Clerk. In the absence of the City Clerk the request will be promptly forwarded to the employee or official next designated by the Montrose City Council or chief administrative officer to receive the FOIA request.
4. The date and time received must be recorded on the written form immediately.
5. The written FOIA request made by facsimile, electronic mail, or other electronic transmission is not recorded as received by the FOIA Coordinator until one (1) business day after the electronic transmission is made.
6. If the request is estimated to cost more than fifty dollars (\$50.00), including copying, labor, mailing and other applicable charges, the City Clerk or another employee in the City Offices Building will fill in the estimated cost section, determine the deposit as one-half (1/2) the estimated cost, and indicate the balance. The requesting person must make this good faith payment deposit in advance of the performance of the response work. If the request is made by mail or electronically and a deposit is required, the requesting person must be notified immediately in writing by the FOIA Coordinator that the deposit must be paid before searching, reviewing, copying and all other tasks performed in the process of responding can begin.
7. One copy of this completed form will be returned to the requesting party.
8. A copy will also be immediately transmitted by the City Clerk or another employee in the City Offices Building receiving the written FOIA request to any other appropriate agency, authority, departments, boards, commissions or committees involved in effectively responding to the FOIA request.
9. Unless otherwise agreed to in writing by the person making the FOIA request, the FOIA Coordinator will respond to a written FOIA request for a nonexempt public record within five (5) business days after receiving the written FOIA request by doing one (1) of the following actions:
 - A. Granting the request. If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will communicate to the person and arrange for inspection at a reasonable time during regular office hours.
 - B. Issuing a written notice to the requesting person denying the request. Granting the request in part and issuing a written notice to the requesting person denying the request in part.
 - C. Issuing a written to the requesting person extending for not more than ten (10) business days the period during which the FOIA coordinator shall respond to the request in writing. The FOIA Coordinator shall not issue more than one (1)

written extension for a particular written FOIA request. If the FOIA Coordinator issues a written notice to the requesting person extending the period for a response to the written FOIA request the notice will specify the reasons for the extension and the date by which the FOIA Coordinator will do one (1) of the following:

- i. Grant the request. Issue a written notice to the requesting person denying the request.
 - ii. Grant the request in part and issue a written notice to the requesting person denying the request in part.
10. A written notice from the FOIA Coordinator denying a written FOIA request for a public record in whole or in part is the City's final determination denying the written FOIA request or portion of that request. The written notice from the FOIA Coordinator denying all or a portion of the request will contain:
- A. An explanation as to why the requested public record is exempt under the basis of the Act or other statute or order by order of a court of competent jurisdiction for the determination that the public record, or a portion of that public record, is exempt from disclosure, if that is the reason that for denying all or a portion of the request.
 - B. A certificate that the public record does not exist under the name given by the person requesting the FOIA information or by another name reasonably known to the City, if that is the reason for denying the request or a portion of the request. Where a written FOIA request received does not sufficiently describe the public records requested, the FOIA Coordinator will notify the person who made the request for a clarification. Such written notice, if sent to the requester, will not be interpreted as a denial of the request for purposes of the Act or this Policy.
 - C. A description of a public record or information on a public record that is separated or deleted pursuant to nonexempt public records in accordance with the provisions contained within the Act. In addition, the FOIA Coordinator will generally describe the material which had to be separated, in the written notice to the requester, unless doing so would reveal the contents of the exempt information and therefore defeat the purpose of the exemption.
 - D. A full explanation of the requesting person's right to do either of the following to appeal the denial decision:
 - i. Submit to the City Council of the City of Montrose a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.
 - ii. Seek judicial review of the denial to a court of competent jurisdiction in accordance with the provisions contained within the Act to compel the City's disclosure of the nonexempt public record within one hundred-eighty (180) days after the City's final determination to deny a written FOIA request.
 - E. Written notice of the right to receive attorneys' fees and damages if, after judicial review, the circuit court determines that the City has not complied with the Act and orders disclosure of all or a portion of a nonexempt public record.
 - F. The FOIA Coordinator will sign the written notice of denial addressed to the requesting person.

VI. Procedures for Appealing Disclosure Denial by FOIA Coordinator

1. The Montrose City Council is not considered to have received a written appeal of the FOIA Coordinator's written denial, in whole or in part, until the first regularly scheduled meeting after receiving submission of the written appeal denying, in whole or in part, a written FOIA request disclosure of a public record by the FOIA Coordinator. In its consideration of any appeal, the Montrose City Council will review the materials submitted by the appellant, any written comments received from the FOIA coordinator, any other information the City Council deems necessary.
2. The City Council may deliberate and will do one (1) of the following actions upon conclusion of consideration of a FOIA denial appeal:
 - A. Reverse the disclosure denial.
 - B. Issue a written notice to the requesting person upholding the disclosure denial.
 - C. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
 - D. Under unusual circumstances, issue a written notice extending for not more than ten (10) business days the period during which the City Council will respond to the written appeal. The City Council will not issue more than one (1) notice of written extension for a particular appeal.
 - E. The appellant may choose to commence an action in the Circuit Court to compel the City's disclosure of the public records within one hundred-eighty (180) days after the City's determination to deny a FOIA request in accordance with the Act.

VII. Provisions for Examining and Copying Public Records

1. All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the Montrose City Council in the FOIA fees and charges schedule form and payment is due from the person making the written FOIA request. Fees and charges are limited to those in accordance with the provisions contained within the Act.
2. The City will not deliver or make a public record available to the requesting person until full payment is made of all related fees and charges assessed.
3. Whenever the total fees and charges for a FOIA request are estimated to exceed fifty dollars (\$50.00), the City requires that the person making the request pay one-half (1/2) of the total estimated amount as a good faith payment deposit prior to any searching, reviewing or copying, etc. work tasks actually being performed by an employee on this type of request as permitted by the Act. The full balance must be paid prior to the release of any documents related to the particular FOIA request.
4. A search for a nonexempt public record may be conducted along with an examination without FOIA request fees or charges being levied against the person making the request provided no copies are requested.

VIII. Fee Waiver.

1. A nonexempt public record search will be made and a copy of the public record requested furnished without FOIA fees and charges assessed by the requesting person for the first twenty dollars (\$20.00) for each written FOIA request if the individual is entitled to the information under the Act and who submits a written affidavit stating that the individual is then receiving public assistance or, if not public assistance, stating facts showing inability to pay the cost because of being indigence. The affidavit must be sworn to under the penalty of perjury and/or notarized that the person's income level is at or below the federal poverty level as determined and established by the appropriate agency, bureau or department of the United States of America Federal Government.
2. A nonexempt public record search may be conducted or copies of public records may be furnished without charge or at a reduced charge if the Montrose City Council determines that a waiver or reduction of the fee for that particular written FOIA request from a person is in the public interest because searching for or furnishing copies of the public record is considered as primarily benefitting the general public.

IX. Penalties for Failure to Comply to FOIA Policy and Act

Any officer or employee of the City of Montrose who intentionally and willfully violates the provisions of this policy, following a hearing and decision rendered by the Montrose City Council upon hearing all the evidence and facts presented by interested and/or affected parties/persons, may be subject to disciplinary action as provide by adopted written City policies and applicable laws, as well as civil and/or criminal prosecution action according to enacted laws of the State of Michigan. If the circuit court determines in an action commenced under the Freedom-of-Information-Act that the public body has arbitrarily and capriciously violated this Act by refusal or delay in disclosing or providing copies of a public record, the court may award, in addition to any actual or compensatory damages, punitive damages in the amount of five hundred dollars (\$500.00) to the person seeking the right to inspect or receive a copy of a public record. The damages are not assessed against an individual, but are assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Adopted 10-13-2011