

**ANN ARBOR DISTRICT LIBRARY**

**FREEDOM OF INFORMATION ACT  
PROCEDURES AND GUIDELINES**

Effective July 1, 2015

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**ANN ARBOR DISTRICT LIBRARY  
FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES**

**I. GENERAL POLICY**

It is the policy of the Ann Arbor District Library (“AADL”) to fulfill the legislative intent of the state’s Freedom of Information Act (“FOIA” or the “Act”),<sup>1</sup> MCL 15.231 *et seq.*, in providing public access to nonexempt public records/information in accordance with the Act. A FOIA request may be considered as any **written** request for records or documents, regardless of whether the request mentions the FOIA.<sup>2</sup> A FOIA request may be a part of much more extensive written communication that may not initially appear to be a formal FOIA request, in accord with the specific policy, procedure, or practice set forth in this document. There are numerous statutes or standards set forth in Michigan law that can impact whether and/or how certain information should be disclosed. If an employee has any doubt as to how a request for records/information should be handled, the employee should confer with AADL’s FOIA Coordinator.

In general, all records/information of a public body except those specifically cited as exempt under MCL 15.243 are subject to disclosure in accordance with the FOIA. Public records/information subject to the FOIA include: correspondence (including e-mails); records maintained in databases; approved and/or draft minutes of public meetings; informal notes or formal and informal recordings; public officials voting records; staff manuals; and written or recorded statements which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by AADL in the discharge of its functions.

The form of the requested public record is irrelevant to the request. The FOIA, except for computer software, applies to any handwriting, typewriting, printing, photographing, photocopying, and every other means of recording. It includes letters, words, pictures, sounds, symbols, or combinations thereof; as well as 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.

This document is available on AADL’s website at <http://www.aadl.org> and is also available at all AADL branches.

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<sup>1</sup> References to FOIA in this document are intended to refer to the FOIA and any and all amendments to the FOIA.

<sup>2</sup> As discussed below, FOIA also provides that if AADL receives a verbal request for information that it believes is available on its website that AADL must, where practicable and to the best of the public employee’s knowledge, inform the requestor about AADL’s pertinent website address.

## **A. AADL'S GENERAL FOIA OBLIGATIONS**

### **1. What Is a Public Record**

It must be a "writing" or, in other words, it must be material that has been perceived, recorded and able to be reproduced. For example: e-mail, memorandums, pictures, notes, your internet explorer cache, databases, videotape, and voicemail.

It must be prepared, owned, used, in the possession of, or retained by a public body.

It must be "prepared, owned, used...in the performance of an official function." A record that, while prepared, owned, used, in the possession of, or retained by a public body, if not done so in the performance of an official function is not a public record. If the requested record is not a public record, the analysis under FOIA ends as FOIA only applies to public records.

If the requested record is a public record, FOIA separates public records into two classes:

- Those that are exempt from disclosure under MCL 15.243,<sup>3</sup> and
- All public records that are not exempt from disclosure under MCL 15.243 and which are subject to disclosure under FOIA.

### **2. Certification**

Regarding requests for certified copies of records, or certification of non-existence, a certificate does not have to be a separate document; the certification can be made in the response. The FOIA coordinator must use language to the effect that "I certify that the public record does not exist under the name given by you or by another name reasonably known to the Department." A FOIA coordinator cannot simply "not respond" because the record does not exist.

### **3. Other Production Rules**

A public body must have in its possession or control a copy of the requested document before it can be produced, or before a court can order its production.

The FOIA requires disclosure of the fact that a requested document does not exist. A plaintiff in a FOIA action that is forced to file a lawsuit to ascertain that a document does not exist is a prevailing party entitled to an award of costs and reasonable attorney fees.

### **4. Fee Calculations and Detailed Itemization Requirements**

AADL must, as part of its response to a FOIA request, provide a detailed itemization that clearly lists and explains all allowable charges for each of the components listed below under

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<sup>3</sup> MCL 15.243(1)(d) provides that exemptions to the FOIA's disclosure requirements may also be found in other statutes.

Section II.C.6 of this document that compose the total fee used for estimating or charging purposes.

## **B. Making a FOIA Request to AADL**

1. **Written Requests.** Written requests may be submitted to AADL's FOIA Coordinator at the following address:

The Ann Arbor District Library  
Attention: FOIA Coordinator  
343 South Fifth Avenue  
Ann Arbor, MI 48104

In the event a written FOIA request is received by an AADL employee other than the FOIA Coordinator, a copy of the written request should be provided to the FOIA Coordinator the same day it is received. All written requests for production of records shall be processed by the FOIA Coordinator.

2. **Oral Requests.** All FOIA requests shall be presented in writing. FOIA, however, also provides that if AADL receives a verbal request for information that it believes is available on its website AADL must, where practicable and to the best of the public employee's knowledge, inform the requestor about AADL's pertinent website address. The FOIA Coordinator must be notified of any such request. See Section II.B. for further information.

3. **Requests to Review Records.** If a request is received to review records, facilities should be made available to inspect records during AADL business hours and when the records can be reasonably made available. The person who wishes to inspect records shall submit a request form describing the requested documents prior to allowing the inspection of the records. See Section II.D. for further information.

4. **Requests Made by Fax, E-Mail or Other Electronic Means.** These requests shall be deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made and shall be handled in the same manner as a written request in subparagraph 1 above.

5. **Requests Sent to Junk or Spam Folders.** A written request that is sent by e-mail and delivered to the public body's spam or junk mail folder is not received until one day after the public body first becomes aware of the written request. The public body must note in its records both the time the written request is delivered to the spam or junk mail folder and the time the public body first becomes aware of the request. Further information about recording FOIA requests is located in Section II.B. of this document.

## **C. AADL's Obligation to Respond to a FOIA Request**

The FOIA Coordinator, as discussed further in Section II.A. and II.B. herein, shall maintain a log of all written requests received showing the nature and date of the request, determination of disposition, date of disposition, and manner of final response to the FOIA

request. Requests shall sufficiently describe the record to enable the FOIA Coordinator to identify and locate the record.

The FOIA Coordinator shall, no more than five business days after the request has been made, unless a single extension of not more than ten business days has been issued, or where the time limits have been agreed to upon in writing by the requesting person, provide one of the following responses:

1. **Grant the Request.** A copy of the request for a public record along with all of the requested documents shall be sent to the person who requested the records on a response for public records form.
2. **Deny the Request.** The FOIA Coordinator shall sign and state the reasons for denial, including an explanation of the requesting person's right to seek a non-mandatory appeal from the FOIA Coordinator's decision to the Director or a judicial review of the decision as provided under FOIA. Failure to timely respond to the request constitutes denial. Denial may be made because, among other reasons, the record does not exist, it cannot be sufficiently identified from the description contained in the request; or the record is exempt (if a record is exempt, AADL should provide the specific statutory citation for the exemption that applies to the specific request). See Section II.E. for more denial information.
3. **Grant the request and issue a written notice to the requesting person denying such a request in part.** Material which is partially exempt and partially subject to disclosure shall be separated or deleted and the non-exempt material offered for inspection. A general description of the separated or deleted information shall be provided to the requesting person.
4. **Request an Extension.** AADL may extend the response period by an additional 10 business days with a notice that specifies the reason(s) for the extension and date by which the public body does one of the above. A public body cannot issue more than one notice of extension for a particular request.

This document provides further guidelines in responding to a FOIA request as well as the procedures by which AADL may charge a requestor and the process by which a requestor may appeal a decision by AADL.

## **II. POLICY/GUIDELINES**

When a AADL employee receives a written request for information under FOIA, the request must be immediately date stamped and forwarded to the FOIA Coordinator. AADL is required by law to respond to requests within 5 business days after receiving the request by an employee—15 business days, if AADL properly invokes the 10-day extension period. Employees should not assume an extension shall automatically be claimed. Therefore, it is imperative that the employee provide the FOIA Coordinator with the request immediately.

AADL is permitted to charge fees for the costs of providing requested information (see Section II.C.6. of this document). The fees may include certain charges for labor, duplicating, and mailing as explained below. The FOIA Coordinator will work with staff in determining the proper costs and any fees that may be charged. Requestors will be provided with a detailed itemization of any costs, as provided herein.

#### **A. The Role of the FOIA Coordinator**

The FOIA Coordinator shall be responsible for accepting and processing requests for AADL's public records under the Act and shall be responsible for approving a denial. In addition, the FOIA Coordinator shall be responsible for the following activities:

- Logging FOIA requests into the method used, based on the date of receipt by any employee, calculate the response due date based on the FOIA (extended response dates can only be based on criteria set forth in the FOIA.)
- Determining whether requested records/information exist.
- Determining whether part or all of requested records is exempt, and separating exempt from nonexempt records.
- Reviewing records to be collected to determine estimated costs, if applicable to be charged; or waived due to indigency.
- Preparing necessary fee estimates based on AADL's applicable fee schedule and forwarding the estimates to the requester.
- Pursuant to internal review with appropriate staff, forwarding response to the FOIA requester within 5 business days of receipt of the request or within 15 business days, if an extension was claimed. It is noted that the FOIA requires a response within the statutory timeframes, containing any claimed FOIA (Section 13) exemptions from release of records. However, the response need not be sent with all actual records/documents. This is particularly the case where a "good faith" payment is required.
- Where applicable, upon receipt of required payments, mailing requested records.
- Consulting with AADL's legal counsel regarding issues of concern regarding FOIA requests/responses.
- Addressing appeals of non-disclosure of requested records/information.
- Maintaining records on requests sent to spam or junk mail folders, indigent requesters, and delinquent accounts.

#### **B. FOIA Requests Must Be In Writing; Procedures for Verbal Requests**

All requests for information under the FOIA must be in writing, including facsimile or electronic mail; and requesters should provide their name, address, and date of request. This is necessary for AADL to document that a request has been properly made, processed, and mailed (FOIA responses involving an extensive amount of records likely will need to be mailed to an actual postal address and delays will ensue if a requestor only has provided an e-mail address or



phone number); and to assist AADL in determining “excessive” requests for the same information.

As noted above though, FOIA also requires a public body to respond to a verbal request for information if the public employee to which the verbal request is made believes that the requested material is available on its website where practicable and to the best of the public employee’s knowledge. If a AADL employee receives such a request, the employee shall: (1) request that the requester fully identify themselves by full name and agency represented; and (2) if the request is made to an employee other than the FOIA Coordinator, the request and response shall be noted by the employee and sent to the FOIA Coordinator. If the AADL employee does not believe that the requested material is available on AADL’s website, then the employee should direct the requestor to make his or her request in writing.

## **C. FOIA Processing Costs**

### **1. General Information**

Section 4(4) of the FOIA provides that AADL, in particular instances, may charge fees/costs of processing FOIA requests when the failure to charge for labor incurred for search, examination, review, the deletion and separation of exempt from nonexempt information, duplication, mailing, and related costs that would result in unreasonably high costs to the AADL. Some factors related to unreasonably high costs include, but are not limited to, the following:

- Amount of labor/time needed to locate and search for requested records;
- The volume of files that have to be reviewed in order to locate the requested records;
- Amount of labor time needed to examine records to separate/redact exempt from nonexempt material;
- Amount of labor/time and costs to comply with requests for audio taped files, CDs, photos, etc.;
- Amount of paper records that need to be copied;
- Amount of postage required to mail requested records;
- Amount of internal supplies, electricity, copy equipment usage, and other internal costs not budgeted for FOIA related issues.

Further, the above may require employees to divert substantial time from their regular funding source assignments to process FOIA requests, causing AADL to accrue the costs of affected employee(s) wages and benefits to process FOIA requests that may not be covered by a particular fund source.

Section 4 of the FOIA also provides that AADL may charge for actual costs for public records searches, copying for inspection, or providing copies. The fees allowable include costs for actual mailing; actual cost for copying or publications; and certain costs associated with labor related to the cost of search, examination, review, and deletion and separation of exempt from non-exempt information. As discussed below, AADL also may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the detailed itemization form. If AADL

provides the requestor with a late response that is either willful or intentional OR the written request contained clear references to FOIA within the first 250 words of the request (or on an envelope/email subject line or fax cover), AADL must reduce the charge for labor costs by 5% for each day the public body exceeds the time permitted for a response. The detailed itemization must reflect any charge reductions.

## **2. Good Faith Deposits**

For costs that are estimated to exceed \$50.00, Section 4(2) of the FOIA allows AADL to require, in its initial response or a subsequent response, a “good faith” deposit, not to exceed one-half (1/2) of the total of estimated fee. If a requester is notified that a deposit is required, AADL should not proceed with further processing (making copies, redacting, etc.) until the requester pays the deposit. The request for a deposit must also include a detailed itemization as required by Section 4 of the FOIA.

If requesting a good faith deposit, AADL’s response must also contain a best efforts estimate by it regarding the time frame it will take AADL to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon AADL, but AADL will provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state’s public policy under the FOIA and the nature of the request in the particular instance. If AADL does not respond in a timely manner as described in Section I.C., it is not relieved from its obligation to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of the FOIA.

## **3. FOIA Request Logs**

The FOIA Coordinator should maintain an updated log, containing a record of all FOIA requests, to include: the date a request is received, the name of the requestor, and the general subject matter (case name, licensee name, etc.) of the request, the date of the response, and any extension dates. In addition, for FOIA requests sent to junk or spam folders, the FOIA request log contains a section to record both the time the written request is delivered to the spam or junk mail folder and the time the public body first becomes aware of the request.

Also, the FOIA Coordinator, per Section 3(2) of the FOIA, must maintain records of all FOIA requests and copies of responses to each request for a minimum of one calendar year.

## **4. Unreasonably High Costs Threshold**

AADL’s policy regarding the determination of “unreasonably high costs” to process certain FOIA requests is that AADL shall charge a requester for any costs exceeding \$20.00 of labor costs to search for records; to examine/review records; to separate/redact exempt material, and mail records. As the FOIA requires that fees/rates not be dependent upon the identity of the requester, this policy provides uniform and consistent guidelines regarding AADL costs to process FOIA requests.

## 5. Accessible Format and Costs

The requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. AADL will provide the responsive records and/or information, if any, on the requested media so long as it has the technological capability necessary to provide records on the particular non-paper physical media stipulated in the particular instance.

As regards to FOIA requests from disabled persons that specifically request that the public records be sent to them in “an accessible format,” AADL may be required to absorb certain charges to comply with requests in accordance with the ADA Title III Technical Assistance Manual, which indicates: “III-4.1400 Surcharges. Although compliance may result in some additional cost, a public accommodation may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.”

## 6. Cost Estimate and Charge Computation

Except as otherwise provided in the FOIA, if AADL estimates or charges a fee in accordance with the FOIA, the total fee shall not exceed the sum of the following components:

- (a) **Labor Costs Associated with Searching/Locating/Examining Records:** AADL may charge that portion of 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. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Such labor costs must be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

AADL cannot charge for such labor if any public record requested is available on AADL’s website. If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on its website, AADL shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.

On the detailed itemization described below, AADL shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If AADL has included the

website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, AADL shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation under FOIA, not to exceed the actual costs of providing the information in the specified format.

(b) **Labor Costs Associated with Separating and Deleting Exempt**

**Information:** AADL may charge that portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in MCL 15.244. For services performed by an employee of AADL, AADL shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in MCL 15.244, regardless of whether that person is available or who actually performs the labor. If AADL does not employ a person capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in MCL 15.244 as determined by the FOIA Coordinator on a case-by-case basis, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs when calculating charges under this subdivision if it clearly notes the name of the contracted person or firm on the detailed itemization. Total labor costs calculated for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate determined under section 4 of the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424. Such labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. AADL shall not charge for labor directly associated with redaction under MCL 15.244 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the AADL's possession.

(c) **Actual Cost for Non-Paper Physical Media:**

For public records provided to the requestor on non-paper physical media, AADL may charge the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This subdivision does not apply if AADL lacks the technological

capability necessary to provide records on the particular non-paper physical media stipulated in the particular instance.

- (d) **Actual Cost for Duplication or Publication:** For paper copies of public records provided to the requestor, AADL may charge the actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. AADL shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.
- (e) **Labor Costs Associated with Duplication or Publication:** AADL may charge the cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the internet or other electronic means as stipulated by the requestor. AADL cannot charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor. Such labor costs may be estimated and charged in time increments at AADL's discretion; however, all partial time increments shall be rounded down.
- (f) **Actual Cost of Mailing:** AADL may charge the actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. AADL cannot charge more for expedited shipping or insurance unless specifically stipulated by the requestor, but may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.

The FOIA requires AADL, when calculating labor costs described above, to itemize the fee components in a manner that expresses both the hourly wage and the number of hours charged. AADL may also add up to 50% of the applicable labor charge amount to cover or partially cover the cost of fringe benefits if AADL clearly notes the percentage multiplier used to account for benefits in the detailed itemization described in section 4 of the FOIA. Subject to the 50% limitation, AADL cannot charge more than the actual cost of fringe benefits, and overtime wages cannot be used in calculating the cost of fringe benefits. Overtime wages cannot be included in the calculation of labor costs unless overtime is specifically stipulated to by the requestor and clearly noted on the detailed itemization.

## 7. Waiver of FOIA Costs Guidelines

Section 4(2) of the FOIA provides that individuals who submit an affidavit or other proof showing that they are indigent and receiving public assistance, or, if not receiving public assistance, show an inability to pay costs because of indigency shall not be charged for the first \$20.00 of the fee for each request. Determination of eligibility for fee waivers or fee reductions shall be made by AADL, but must be based on a written determination that such a waiver or fee reduction is in the public interest. An individual is ineligible for this fee reduction if any of the following apply: (i) the individual has previously received discounted copies of public records from AADL twice during that calendar year; or (ii) the individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. AADL may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

A nonprofit organization formally designated by the State of Michigan to carry out activities under subtitle C of the 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, shall also not be charged for the first \$20.00 of the fee for each request if the request meets all of the following requirements. First, the request must be made directly on behalf of the organization or its clients. Second, the request must be 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. And third, the request must be accompanied by documentation of its designation by the state, if requested by AADL.

Section 4(2) of the FOIA also provides that a public body, at its discretion, may waive or reduce the costs for processing a FOIA request if the public body determines that the requested records/information is in the general public interest. Based on the AADL's uniform cost threshold of charging for estimated costs at or above \$20.00, the following guidelines are applicable regarding waivers or charge reductions:

- (a) Exceptions to the \$20.00 charge assessment or fee reduction include:
  - Indigent Requesters. Charges above \$20.00 shall be reduced by \$20.00 for requesters/individuals submitting proof of receiving public assistance or determined unable to pay the cost due to indigency, unemployment, etc.
  - Regular/Statutory Fee Charges. Agencies that have regulatory/statutory established fee charges for certain facets of providing mailings/publications are to maintain current practices.
  - Requests from recognized local, state, federal and foreign government agencies and bodies shall be responded to without charge, except in unusual circumstances, as determined by the FOIA Coordinator.



(b) Non-Exceptions. Generally, on a case-by-case basis, costs are not waived or reduced for:

- Requesters from private sector and non-profit organizations and media sources that claim that records/information requested can be considered as benefitting the public.
- Requesters who indicate that they are requesting records for graduate or other type academic related reasons.
- Requesters that submit subpoenas that require the same labor efforts/costs to process the subpoenaed records/information.
- Requests from elected officials on behalf of constituents.
- Fee schedules established by statute.

## **8. Cost Justification Examples and Detailed Itemization**

Each cost determination and the reason(s) justifying the costs must be based on a case-by-case basis depending on the particular FOIA request; and must specifically identify the nature of the costs.

The FOIA requires AADL to use a standard form, or adopt a form created by the Department of Technology, Management, and Budget, for detailed itemization of any fee amount in its responses to written requests under the FOIA. The detailed itemization must clearly list and explain the allowable charges for each of the fee components listed under Section II.C.6. above that compose the total fee used for estimating or charging purposes. AADL hereby adopts and incorporates by reference the form created by the Department of Technology, Management, and Budget, which will be used to provide requesters with a detailed itemization of any amount associated with the requestor's request in accordance with FOIA. An itemization form must accompany AADL's response to a FOIA request.

## **9. Recommended Charges/Instructions**

The following may be used in logging invoices issued and charges applicable to requests for records/information provided under the Act costing \$20.00 or more to process.

**Invoices:** A FOIA log should include an updated tally of all FOIA charges per FOIA requester. An invoice may be generated and forwarded to a FOIA requester at the time that the charges meet or exceed \$20.00. Invoices shall be prepared on a form developed by the Department, or generally used by the affected agency.

**Delinquent Payments:** The FOIA Coordinator should develop and maintain a list of all FOIA requesters who are currently delinquent on FOIA invoice payments. Once developed, the FOIA Coordinator shall reference this list prior to responding to a FOIA request from the same requester for the same information. Requests for different information or materials shall continue to be filled, even though a requester's delinquent account is not current (OAG, 1998, No. 6977). All new responses, however, shall notify the requester of the delinquent payment. Further, compliance with a new FOIA request, when a delinquent payment exists, shall not be

considered a waiver by the Department of its right to collect fees for the delinquent payment through all means permitted under the law.

After AADL has granted and fulfilled a written request from an individual under the FOIA, if AADL has not been paid in full the total amount for the copies of public records that AADL made available to the individual as a result of that written request, AADL may require a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

- (a) The final fee for the prior written request was not more than 105% of the estimated fee.
- (b) The public records made available contained the information being sought in the prior written request and are still in AADL's possession.
- (c) The public records were made available to the individual, subject to payment, within the time frame estimate described under the FOIA.
- (d) Ninety days have passed since AADL notified the individual in writing that the public records were available for pickup or mailing.
- (e) The individual is unable to show proof of prior payment to AADL.
- (f) AADL calculates a detailed itemization, as required under the FOIA, that is the basis for the current written request's increased estimated fee deposit.

AADL, however, cannot require an increased estimated fee deposit from an individual as described above if any of the following apply: (1) the individual is able to show proof of prior payment in full to the public body; (2) AADL is subsequently paid in full for the applicable prior written request; or (3) three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to AADL.

**Costs Greater Than \$50.00:** When costs are expected to exceed fifty dollars, an initial good faith deposit of 50% or the full amount of the estimated costs shall be required and received prior to commencement of processing the FOIA request. The balance of any deposit payment shall be collected prior to release or delivery of record copies or other materials.

**Request for Onsite Inspection of Records:** A request to personally inspect and/or review a public record, or a part thereof, shall be promptly responded to by the FOIA Coordinator or his/her designee. See Section II.D., Inspection and Protection of Records, of this document for further guidance.

**Online Records:** If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on its website, AADL shall notify the requestor



in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available. On the detailed itemization, AADL shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If AADL has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, AADL shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual costs of providing the information in the specified format.

#### **D. Inspection and Protection of Records**

MCL 15.233, Section 3(3) of the state's Freedom of Information Act (FOIA) provides that:

“A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.”

The following provides guidelines regarding the onsite inspection, examination, and protection of AADL's original public records.

##### **1. Inspection of Records and Appointments**

Any person or persons making a request (by letter, facsimile, or electronic mail), via the FOIA, to inspect AADL records must make an appointment with the FOIA Coordinator (or assignee) during AADL's regular business hours. After the issuance of written notice in response to a request to inspect records, appointments should usually occur no less than ten business days after the appointment request to allow the unit(s) to make appropriate arrangements to:

- Find and gather the requested information, if available;
- Provide reasonable, secure facilities for inspection and examination;
- Provide adequate protection of original public records; and
- Coordinate regular functions while the inspection occurs.

##### **2. Chargeable Fees/Costs**

The FOIA provides that a public body may charge the costs for providing copies and protecting public records. Except as may be provided in another Act, the total fee shall not exceed the sum of the following components:

- Labor costs directly associated with searching for, locating, and examining public records in response to written request
- Labor costs, including necessary review, directly associated with separating and deleting exempt information from nonexempt information
- For public records provided in non-physical paper media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media
- For paper copies, the actual total incremental cost of necessary duplication, not including labor
- The cost of labor directly associated with duplication or publication (including making paper or digital copies or transferring digital records).
- Actual Mailing Cost

See Section II.C. for further information on permissible costs, good faith deposits, and waivers.

### **3. Facilities**

AADL shall prepare/provide an appropriate space at the agreed site for the requester to inspect the requested records.

### **4. Record Preparation**

AADL shall:

- Gather from all AADL sources the requested records to first review to determine whether there is exempt information that needs to be segregated and/or redacted prior to inspection.
- Take the appropriately reviewed records to the designated secure location where the requester will be allowed to inspect them.

### **5. Inspection of Original Records**

A staff member must be present at all time during the inspection of AADL records if any original records are involved. Requester are allowed to review/identify the records desired to be copied by placing a yellow “post-it” sticker or paper clip on each page. Note: Wait until all pages are identified prior to making any copies; and dependent upon the number of copies to be made, advise the requester that the copies may have to be mailed the next business day.

In order for records/documents to remain together as filed, do not allow the requester to un-staple/un-clip records without supervision. The requester is not allowed to remove documents from files or from the premises unless those documents are copied specifically for the requester by the FOIA Coordinator.

A public body is only required to make the records available for inspection and/or copying. It is not required to explain or interpret the contents of the records. Thusly, the staff

assigned to secure the records should not engage in discussions with the requester regarding the content or interpretation of the records being inspected. If the requester has questions, tell him/her to submit the questions in writing back to the FOIA Coordinator. Finally, a public body is not required to create, summarize, or make a compilation of voluminous documents.

## **E. Appeals**

If AADL makes a final determination to deny all or a portion of a request, the requesting person may do one of the following at his or her option:

(1) Submit to the Director of the Library (the “Director”) a written appeal at 343 South Fifth Avenue, Ann Arbor, MI 48104 that specifically states the word “appeal” and identifies the reason or reasons for reversal of the denial.

(2) Seek judicial review of the denial under section 10 of the FOIA.

### **1. Standardized Denial/Appeal Response for a Denial**

AADL’s Denial/Appeal notice language has been standardized, and is included on the Determination Form.

In addition to the information contained above, a written notice denying a request for a public record, in whole or in part, must also contain (a) 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; (b) a certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request; and (c) a description of a public record or information on a public record that is separated or deleted pursuant to section 14 of the FOIA, if a separation or deletion is made. The FOIA Coordinator, or his or her designee, must sign the written notice of denial.

### **2. Appeal Process for a Denial**

If a requestor opts to appeal a denial by submitting an appeal to the Director, then the FOIA Coordinator shall immediately, upon receipt, refer all written FOIA appeals to the Director. The Director shall then review any materials submitted by the appellant, any written comments received from the FOIA Coordinator or his or her designee(s), and any other information that the Director deems necessary.

The Director has ten business days, absent compelling reasons for an extension of time, to take any of the following actions in response to the filing of an appeal of a FOIA request denial:

- Reverse the disclosure denial;
- Issue a written notice to the requesting person upholding the disclosure denial;
- Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

### **3. Appeal Process for an Excessive Fee**

If AADL requires a fee that a requestor believes to exceed the amount permitted under the FOIA and this document, then the requesting person may seek judicial review as provided in Section 10a of the FOIA.

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