

CITY OF LUDINGTON

SUMMARY OF FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

The Freedom of Information Act, being 1976 PA 442 (MCL 15.231 to 15.246) (“FOIA” or the “Act”) mandates disclosure of most public records. To fulfill this mandate, the City adopted “Freedom of Information Act Procedures and Guidelines” (the “Procedures”) for handling FOIA requests. This document summarizes the City’s Procedures in accordance with FOIA.

I. Submitting a FOIA Request

You must submit a request for City records in writing to the City’s FOIA Coordinator. The City Manager has been designated by the City Council as the City’s FOIA Coordinator. You may request either (a) to receive a copy of City records, or (b) to review City records.

You may submit the FOIA request for records in person, by mail or via electronic means (i.e., fax, e-mail or other electronic means). Requests submitted in person or by mail are deemed received as of the date of receipt. Requests submitted to the City via electronic means are deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made.

II. City’s Response to a FOIA Request

Once the City receives your FOIA request, the City must respond to your request within five business days, unless the City extends the period to respond to the request by not more than ten business days, in addition to the usual five business days.

In response to a FOIA request, the City may: (1) grant the request (and provide either a copy of the requested record or the opportunity to review the record, in accordance with your request); (2) deny the request if no such record exists or the record is exempt pursuant to one of the 16 exemptions under the Act that are applicable to the City; or (3) grant the request in part and deny the request in part.

If the City issues a ten business day extension to respond to the FOIA request, the City’s written response to a FOIA request will include (1) an estimate as to when the City will provide the requested records to you, and (2) a detailed summary on the estimate of cost to provide the records to you.

Please note that FOIA does not require the City to make a compilation, summary or report of the information.

III. Reviewing City Records

You may request to review City records. If you make such a request, the City will make facilities available to inspect the requested records during the City’s normal business hours and

when the records can be reasonably made available. You must submit a request form describing the requested documents prior to the City allowing the inspection of the records.

You cannot write or take any notes on original City records that you are reviewing and you will only be allowed to have an erasable pencil with you to take notes. No pens or indelible writing instruments are allowed. No notes or writing of any kind shall be made on the documents. A City official will be present during the inspection of City records if original records are involved and you may be charged a fee to defray the City's cost of the monitoring service to protect the records from loss, unauthorized alteration, mutilation, or destruction. Original records cannot be removed from the area provided for inspection and note taking.

IV. Requesting Copies of City Records

You may request to receive copies of City records. The City will review the available records and provide you with copies of the records unless the records do not exist, are not in possession of the City, or exempt from disclosure under FOIA.

V. Calculation and Payment of Fees; Deposit

Under FOIA, the City may charge a fee for providing you with a copy of a public record, including labor costs, where the failure to charge a fee would result in unreasonably high costs to the City because of the nature of your request. If the time required to respond to a FOIA request exceeds one-half hour, the request will be deemed to result in unreasonably high costs to the City. Prior to responding to a request, the City will provide you with a written estimate of the applicable fees. The City may require the payment of a deposit or, in certain circumstances, waive payment of the fee altogether.

A. Calculation of Fee

The City may charge you a fee for searching, reviewing, redacting, copying and mailing requested records. The fee will be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information pursuant to Section 14 of FOIA. The City will mail the available requested records to you upon payment of the applicable fees. The fees charged by the City for responding to your request may include:

- a fee for the City's labor costs directly associated with (1) making copies (including paper or digital copies), (2) searching for, locating, and examining the requested records, and (3) for the necessary review of and separation and deletion of exempt information from nonexempt information. You will not be charged for the redaction of documents if the City previously redacted the public record in question and the redacted version is still in the City's possession.
- the City's actual cost of mailing for sending the records to you. The City will not send documents via overnight delivery service or expedited shipping (or obtain shipping insurance on such mailing) unless you specifically request such services in writing and agree to pay for such costs.

- the cost to copy the records. The incremental cost of copying the records is five cents per 8 ½” x 11” or 8 ½” x 14” sheet of paper for black-and-white copies and 10 cents for color copies. The City may copy records using double-sided printing (if available). If the City needs to send the records to a commercial copy center for copying, you will be charged for those costs.
- the City’s actual costs to copy photographs, audio or videotapes, microforms, maps or plans including any costs incurred to have a third-party make such copies. If a City official or employee is required to deliver and/or pick up the public records and/or copies of public records, you will be charged for the labor hours (calculated in accordance with the Procedures), spent and applicable mileage (at the then-current IRS mileage reimbursement rate).

For labor costs to comply with a request, the City will charge the hourly wage of its lowest-paid employee capable of performing the necessary task regardless of whether that person is available or who actually performs the labor. The labor charges will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward. The labor charge will include an amount equal to one-half (50%) of the applicable hourly wage to cover (or partially cover) the cost of the fringe benefits (if any) for the lowest-paid employee; provided, however, that such amount will not exceed the actual costs of the fringe benefits.

The review and separation of exempt from non-exempt information may be performed by a City official or employee or, if necessary, outside legal counsel. For services performed by outside legal counsel, the City may charge the legal counsel’s time; the charge will not exceed an amount equal to six times the then-current state minimum hourly wage rate. The City will provide you with a notice as to the name of the contracted person or firm in the City’s detailed itemization of costs. The charges for such services will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward.

B. Fee Waiver

The City may waive all or a portion of the fees for the search and copying of records if the City determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. 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 either: (a) person submits an affidavit stating that they are indigent and receiving specific public assistance, or (b) if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If a requesting person is ineligible for a discount, the City shall provide written notice of ineligibility and the reasons for ineligibility in the City’s response to the FOIA request.

Under the Procedures, you may be ineligible for a fee reduction or waiver if: (a) you previously received discounted copies of public records from the City twice during the calendar year; (b) you are making the records request in conjunction with outside parties who are offering or providing payment or other remuneration to you to make the request; or (c) you are a specific type of nonprofit corporation (as provided in FOIA and the Procedures).

C. Deposit

If it is anticipated that a charge will exceed Fifty and 00/100 (\$50.00) Dollars, you may be required to pay a good faith deposit prior to the City fulfilling the request for the records, but the deposit will not exceed one-half of the total anticipated fee. In certain circumstances, the City may require payment of a deposit equal to 100% of the estimate charge for fulfilling your request for records, if you previously failed to pay the total amount due from a prior FOIA request to the City.

VI. Rights to Appeal

You can appeal decisions made with respect to the records that you requested, if the request was denied or denied in part, or the amount of the calculated fee for responding to your request. An appeal from a determination by the FOIA Coordinator or from a decision of the City Council may be taken to the Mason County Circuit Court.

A. Appeal of Denial of Records (in whole or in part)

You have the right to submit to the City Council, a written appeal that specifically states the word “appeal” and identifies the reason or reasons that you assert in support of reversal of the failure of disclosure of the public records that were not disclosed. In the alternative, you have the right to seek judicial review of the denial or nondisclosure.

Under Section 10 of FOIA, you have the right to receive attorney fees and damages, if, after judicial review, the Mason County Circuit Court determines that the City has not complied with Section 5 of FOIA and that the court orders disclosure of all or a portion of a public record that had not been disclosed to you by the City.

B. Appeal of Calculation of Fee

A requesting person may appeal the amount of a fee to the City Council or the Mason County Circuit Court if that fee exceeds the amount permitted under these Procedures and FOIA.

An appeal on the amount of the fee to the City Council must specifically include the word “appeal” and identify how the required fee exceeds the amount permitted under the Procedures or the Act.

If you, the requesting person, file a fee appeal with the Circuit Court, the City will not complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

Within 10 business days after receiving a written appeal of the fee, the City Council is required to: (1) Waive the fee; or (2) reduce the fee and provide written notice as to the basis for the remaining fee; or (3) uphold the fee and provide written notice as to the basis for the fee; or (4) issue a notice extending for not more than 10 business days the period during which the City

Council must respond to the appeal (the notice will include a detailed reason or reasons why the extension is necessary).

Any appeal will be deemed received as of the date of the first regularly scheduled meeting of the City Council following submission of the written appeal.

A deposit required to be paid by the City is considered a “fee.”

VII. Additional Information; Revisions to Summary and Procedures

Additional information may be found in the City’s Procedures, which may be obtained from the City at 400 S. Harrison Street, Ludington, MI 49431 at no charge.

This Summary and the Procedures may also be found on the City’s website at: www.ludington-mi.gov.

This Summary and the Procedures may be modified from time to time by the City Council and without notice.