**Information useful in determining response to FOIA Request**

**Michigan’s Freedom of Information Act (1976 PA 442,** [MCL 15.231 et.seq](http://legislature.mi.gov/doc.aspx?mcl-Act-442-of-1976)**)** determines the requirement of government entities to provide access and/or copies of information generated by government entities to members of the public who request access and/or copies.

Public Libraries, as government entities, must comply with the requirements of this act.

When responding to a request, it can be helpful to understand what some of the requirements are, and what options a library may have when responding.

When reviewing a request, it is important to identify if the information desired is:

* Available for dissemination (That is, if the information exists in the library. Can it be retrieved?)
* Exempt from FOIA (does the information fall under one of the classifications listed in the statute as not within the purview of FOIA?)

Government entities are required to maintain certain types of information under FOIA and under the Open Meetings Act (OMA). FOIA requires:

[15.241](http://legislature.mi.gov/doc.aspx?mcl-15-241) **Matters required to be published and made available by state agency; form of publications; effect of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.**

**EXEMPTIONS:**

There are certain materials the law has determined are NOT part of the information that government entities must provide.

[15.243](http://legislature.mi.gov/doc.aspx?mcl-15-243) **Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of executive office.**

This list is pretty narrow, and courts may utilize different “tests” and standards when determining whether a particular piece of information fits into one of the exempted categories. For example, personnel records belonging to a government entity are likely not covered under FOIA, as explained by the following court opinion:

“*Personnel documents of public school teacher and principals, which contained performance appraisals, disciplinary actions, and complaints relating to these employees' accomplishments in their public jobs, did not contain information of embarrassing, intimate, private, or confidential nature, and, thus, were not “personal in nature” and exempt from disclosure under privacy exemption under Freedom of Information Act (FOIA). M.C.L.A. § 15.243, subd. 13(1)(a).*

*Bradley v. Saranac Cmty. Sch. Bd. of Educ.,* [455 Mich. 285](https://casetext.com/case/bradley-v-saranac-bd-of-ed)*, 565 N.W.2d 650 (1997) holding modified by Michigan Fed'n of Teachers & Sch. Related Pers., AFT, AFL-CIO v. Univ. of Michigan, 481 Mich. 657, 753 N.W.2d 28 (2008)”*

**FORMAT OR METHOD OF DELIVERY**

Michigan’s FOIA statutes require that records of government entities be made available to the public and that entities provide copies of requested records. However, the statute specifically states that entities responding to a FOIA request do NOT have to create new reports and compilations of existing data in order to comply with a request:

[15.233](http://legislature.mi.gov/doc.aspx?mcl-15-233) **Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.**

*(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.*

*(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.*

Michigan Courts have confirmed this:

 *“Section 3(1), MCL 15.233(1), of the FOIA provides that a person has a right to inspect, copy, or receive copies of the requested public record upon providing a written request sufficiently describing the record to enable the public body to find the public record. However, the FOIA plainly “does not require a public body to create a new public record” in order to satisfy a disclosure request, except “to the extent required by this act for the furnishing of copies, or edited copies ... of an already existing public record.” MCL 15.233(5). Therefore, “[i]n response to an FOIA request, ... the public body is not generally required to make a compilation, summary, or report of information, nor is it generally required to create a new public record.” Southfield, 269 Mich.App. at 281, 713 N.W.2d 28.*

*Arabo v. Michigan Gaming Control Bd., 310 Mich. App. 370, 399,* [872 N.W.2d 223](https://casetext.com/case/arabo-v-mich-gaming-control-bd)*, 239 (2015*

In other words, the data or information itself may be covered under FOIA (and required to be furnished or copied), but the FORMAT of the material (creating a spreadsheet, compiling data into a report, etc.) is not required -unless the government entity already compiles the requested data in the requested format (ie already runs similar reports or spreadsheets).

A request may be received asking for information that is available partly in print or microform and partly in a database in a digital format (perhaps because of the span of years requested, etc.). This section of the law would seem to say that a response can be satisfied according to the format of the records that the entity has.

**FEES FOR RESPONSES/COPIES**

A government entity may charge certain fees for complying with a FOIA request. HOWEVER an entity MUST have adequate FOIA procedures in place (and that comply with the statute) BEFORE charging fees. Township, village, city ,& county libraries should check with their municipalities for applicable policies. District Libraries should develop their own policies. School libraries should look to their institutions. ALL LIBRARIES should have policies posted to their websites:

[15.234](http://legislature.mi.gov/doc.aspx?mcl-15-234) **Fee; limitation on total fee; labor costs; establishment of procedures and guidelines; creation of written public summary; detailed itemization; availability of information on website; notification to requester; deposit; failure to respond in timely manner; increased estimated fee deposit; deposit as fee.**

*“Sec. 4.*

1. *A public body may charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4). Subject to subsections (2), (3), (4), (5), and (9), the fee shall 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 as provided in section 14. Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:”*

Michigan Civil Jurisprudence (a legal encyclopedia) offers additional explanation:

“*A public body must utilize the most economical means available for making copies of public records and may not charge a fee for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless (1) failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and (2) the public body specifically identifies the nature of these unreasonably high costs.*

*21 Mich. Civ. Jur. Records § 33”*

Occasionally requestors may ask entities to waive fees for indigency, or “in the public interest.”

Indigency is covered by MCL 15.234:

[15.234](http://legislature.mi.gov/doc.aspx?mcl-15-234)  **Fee; limitation on total fee; labor costs; establishment of procedures and guidelines; creation of written public summary; detailed itemization; availability of information on website; notification to requester; deposit; failure to respond in timely manner; increased estimated fee deposit; deposit as fee.**

…2(a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. 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 under this subsection from the same public body twice during that calendar year.

(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. A public body 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.

(b) A nonprofit organization formally designated by the state 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, if the request meets all of the following requirements:

(i) Is made directly on behalf of the organization or its clients.

(ii) Is 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.

(iii) Is accompanied by documentation of its designation by the state, if requested by the public body.

“In the Public Interest” Waivers:

Additionally, Government entities may waive the fees, if the entity determines that providing the copies is “in the public interest,” However, this is a determination that the individual entity should make for itself, and, there is no requirement that fees be waived.

As Michigan Civil Jurisprudence explains:

:”*A search for a public record may be conducted, or copies of public records may be furnished, without charge or at a reduced charge if the public body 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.*

*21 Mich. Civ. Jur. Records § 33*”

Libraries can determine their responsibilities for a FOIA request:

* Check their FOIA Policy
* Read the Law ([MCL 15.231 et.seq](http://legislature.mi.gov/doc.aspx?mcl-Act-442-of-1976))
	+ The Michigan Municipal League has a useful FOIA information sheet

<https://www.mml.org/pdf/resources/publications/ebooks/GLV_Hamdbook_by_chapter/APP%203%20Overview%20of%20FOIA.pdf>

* Read the request carefully
	+ Check if the information is
		- Available ( ie, information that the entity has (is either required to keep, or information that it does have).
		- Exempt or not
* If fee waiver or discount is requested, determine whether it is warranted.
* Communicate with requestor as to your FOIA procedure and fee policy for information delivery.
* If requested information is unavailable or requested format is not existing or feasible or possible, notify requestor of policies regarding these.
* As always, if you have any questions or concerns involving a particular request, CONSULT YOUR ATTORNEY. The penalties for violating FOIA can be severe.

**The research and resources above are for information purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.**

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