Guidelines governing the release of public records, pursuant to Public Act 442 of 1976.

This policy establishes a process and procedures for the release of public documents, establishes a policy to recover costs associated with requests, and establishes a procedure for appeals.

Preamble: Statement of Principles

It is the policy of the City of Trenton that all persons, except those who are serving a sentence of imprisonment, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The City of Trenton's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City of Trenton acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Trenton will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City's policy is to disclose public records consistent with and in compliance with State law.

Section 1: General Policies

The City Council, acting pursuant to the authority at MCL 15.236, hereby designates the City Clerk as the City's FOIA Coordinator for general City business. He or she is authorized to designate other City staff to act on his or her behalf during periods of absence to accept and process written requests for the City's public records and approve denials. In addition, the Director of Police and Fire Records Bureau shall be the designated FOIA Coordinator for Police and Fire records.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinators shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. The FOIA Coordinator or other City staff is not obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

A copy of all written requests for public records received by the City shall be maintained for a period of at least one year. The retention of such requests shall be the responsibility of the FOIA Coordinator or, in the event that the records were released without review by the FOIA Coordinator, by the City Department which accepted and processed the request.

The City Administrator is designated by the City Council as the head of the public body for the purpose of responding to appeals of a denial of all or portion of a public record and appeals of processing fees. In the event of the absence or disability of the Administrator, the Assistant Administrator shall act in the place of the Administrator.

Any subpoena from any court, attorney, or any other person which requests the production of any City record shall immediately be forwarded to the Office of City Attorney and falls outside the scope of this Policy.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by City of Trenton must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for general public records may be submitted in person or by mail to the office of the City Clerk, 2800 Third St., Trenton, Michigan, 48183. For Police and Fire Records: 2872 W. Jefferson, Trenton, Michigan 48183. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinators for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or other otherwise provided to him or her in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

The FOIA Coordinators may implement administrative rules permitting verbal requests for public records in designated instances. Verbal requests for public records not available on the City's website are not considered to fall within the scope of the FOIA statute; shall only be responded to where the record in question will be made available or released in its entirety; and when waiver of the requirement of a written request and release of the record, in the particular instance, serves the best interests of the requesting party, the general public and the City. In the event that the public record sought by a verbal request will not be released its entirety, the requesting party shall be advised to file a written request.

Any request to review and/or receive copies of any portion of a personnel file maintained or possessed by the City must be made in writing. This policy does not affect the right of current or former City employees to review or receive copies of documents from their own personnel files.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinators will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The City will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

The FOIA Coordinators, or such other individuals as he or she may designate, shall have exclusive authority to deny any FOIA request, either entirely or in part.

If the request is granted, or granted in part, the FOIA Coordinators will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines along with its Written Public Summary shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the City's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is $50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the City, the cost of processing a FOIA request is expected to exceed $50, or if the requestor has not fully paid for a previously granted request, the City will require a good-faith deposit before processing the request.

In making the request for a good-faith deposit the FOIA Coordinators shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, but will be made in good faith and

will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

If the request is denied or denied in part, the FOIA Coordinators will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the office of the Mayor or seek judicial review in the Wayne County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of $1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator or his or her designee.

If a request does not sufficiently describe a public record, the FOIA Coordinators may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

If the fee estimate to provide the requested public records is expected to exceed $50.00 based on a good-faith calculation by the City, the requestor will be asked to provide a deposit not exceeding on-half of the total estimated fee.
If a request for public records is from a person who has not fully paid the City for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- the final fee for the prior written request is not more than 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in the City's possession;

- the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the City; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to the City;
- the City is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the City.

Section 5: Calculation of Fees

Consistent with the authority granted by statute, it is the intent of the City to 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 so that its general fund and departmental budgets are not unduly burden by the costs associated with processing FOIA requests.

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual FOIA request received by the City.
- Volume or size of the public record requested
- Whether the amount of time spent to search for, examine, review or separate exempt from non-exempt information in the record requested exceeds 15 minutes.
- Whether public records from more than one City department or various City offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record, if the failure to charge a fee results in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed, if the failure to charge a fee results in unreasonably high costs to the City.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means when asked for by the requestor.
- The actual cost of mailing or sending a public record, including the least expensive form of postal delivery confirmation; as well as the cost of expedited shipping or insurance when such is asked for by the requestor.

Labor costs will be calculated based on the following requirements:

- Labor costs directly associated with searching for, locating and examining a requested public record and labor costs associated with a review of a record to separate and delete information exempt from disclosure from information which is disclosed will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- Labor costs associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means when asked for by the requestor, will be charged in 15 minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.

- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
    - The late response was willful and intentional.
    - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information
    - The written request included the words, characters, or abbreviations for "freedom of information", "information", "and FOIA ","" copy" or a

recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.

- Fully note the charge reduction in the Detailed Itemization of Costs Form

Section 6: Waiver of Fees

Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records. The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public.

In determining whether the general public is primarily benefited, the FOIA Coordinator shall consider the following factors, none of which shall be determinative:

- whether the public record being disclosed serves the public policy purposes set forth at Section 1 of the FOIA;
- whether the release primarily serves a private or commercial purpose;
- whether the release implicates the rights of third persons;
- whether waiver of the fee is in the best interest of the City; and
- the manner in which similar requests have been treated.

The City will waive the first $20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the City twice during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

The affidavit shall be a sworn statement made under the penalty of perjury. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

The City will waive the first $20.00 of the processing fee for a request from a nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- is made directly on behalf of the organization or its clients;
- is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931; and
- is accompanied by documentation of its designation by the State.

Section 7: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial directed to the Office of the City Administrator and filed with the City Clerk. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. Upon receipt a copy of the appeal and a written report and recommendation from the City Attorney shall be distributed to all members of the City Council.

Within 10 business days of receiving the appeal the Administrator will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reversing the disclosure denial in part and upholding the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Administrator may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.

Any exemption to the release of requested public records shall be narrowly construed and the burden shall be upon the FOIA Coordinators to demonstrate that the denial of information is justified and should be upheld.

The City Administrator shall provide a copy of his or her written response to the appeal to the other members of the City Council, and file a copy with the City Clerk for public inspection.

Whether or not a requestor submitted an appeal of a denial to the City Administrator, he or she may file a civil action in Wayne County Circuit Court within 180 days after the City's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the City arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the $1,000.

Section 8: Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee or the good faith deposit charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction directed to the Office of the City Administrator and filed with either the City Clerk or the Police and Fire Bureau of Records as applicable. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Administrator will respond in writing by:

- waiving the fee;
- reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the City Administrator that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- upholding the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Administrator that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Administrator will respond to the written appeal.

The Administrator shall provide a copy of his or her written response to the appeal to the other members of the City Council, and file a copy with the City Clerk for public inspection.

Within 45 days after receiving notice of the Administrator's determination of a fee appeal, a requestor may commence a civil action in Wayne County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.
If the court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the court determines that City has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of $500.

Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

Section 10 :Appendix of City of Trenton FOIA Forms

The FOIA Coordinator is authorized to develop those forms necessary or convenient to process FOIA requests, including, but not limited to the following:

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form
- Appeal Form
- Certification Form

EFFECTIVE DATE: July 1, 2015

CITY OF TRENTON

Kyle F. Stack

BY: Kyle F. Stack, Mayor

Patricia M Gearhart

BY: Patricia M. Gearhart, City Clerk