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## ***CITY OF ROSEVILLE***

### **FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES AND GUIDELINES**

These Procedures and Guidelines established pursuant to Resolution No. \_\_\_\_, adopted by the City Council of the City of Roseville on \_\_\_\_\_, 2015. The Policy identifies the procedures that City Officers and employees are to follow when processing a request in accordance with Act No. 442 of the Public Acts of 1976, as amended (the "Act").

#### **SECTION 1. DEFINITIONS**

- Act:** The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.
- FOIA Coordinator:** The individual, designated by the City Council, currently the City Clerk, who is responsible for accepting and processing for public record(s) as outlined in this Policy and the act, and who is responsible for approving denials of requests, or that individual= s designee as provided.
- Person:** An individual, corporation, organization, or other legal entity, as modified by the Act.
- Public Body:** The City of Roseville and its duly constituted departments, Commissions, boards or committees.
- Public Record(s):** A writing which is prepared, owned, used, in the possession of or retained by a public body in the performance or an official function from the time it is created and as otherwise defined by the Act.
- Unusual Circumstances:** Entails the need to search for, collect, or appropriately examine or review a voluminous amount of public record(s) and/or the need to collect public record(s) from numerous locations apart from the processing office.

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

#### **SECTION 2. RIGHT TO RECORD(S)**

A person has the right to submit a written request for public record(s) from the City and its departments, unless that person is in custody and/or prison for a violation of the law. (Freedom of Information Act Worksheet. Appendix A.) The request must sufficiently describe the public record(s) to enable to FOIA Coordinator to identify the requested public record(s).

A person has the right to inspect a public record(s), unless exempted by law or court order. Original public record(s) are not to be released from the City Offices where the public record(s) are secured. A person may request that the copies of a public record(s) be provided subject to the payment of fees outlined in Section 4.

A person has the right to subscribe to future issuances of regularly published records as outlined in Section 3 of the Act for a period of six months or less, which request may be renewed.

Upon request, a person will be provided with a reasonable opportunity to examine the public record(s) provided by the public body. However, in the interest of protecting original records from loss, unauthorized alteration, mutilation or destruction, a copy will be made and the requesting party shall be charged subject to the payment of fees as outlined in Section 4. Persons with special needs should contact the FOIA Coordinator to insure that arrangements for special needs or reasonable facilities are prepared.

### SECTION 3. RIGHTS AND OBLIGATIONS OF THE PUBLIC BODY

The FOIA Coordinator shall provide reasonable facilities and opportunities for person(s) to inspect public records. To implement this Section, the FOIA Coordinator may prepare and submit to the City Council for its approval rules to regulate the time and manner in which records are reviewed, to protect the records and to prevent excessive interference with the public body=s normal operations.

FOIA requests delivered by email are considered received the next business day, or if they have been filtered to a junk or spam file, when retrieved from such file.

The FOIA Coordinator shall provide a certified copy of a public record(s) if a person requests the same in writing.

If the FOIA Coordinator knows or has reason to know that all or some of the requested information is available on the City's website, the requester shall be notified in writing, that all or a portion of such information is available on the website. The location on the website shall be identified and the requestor shall be advised of an additional charge to receive copies of the public records that are available on the website. The requesting party may request a paper record or other format and shall be responsible for paying charges allowed und the Act.

Where an extension of time to respond has been made, the FOIA Coordinator shall additionally furnish a good faith estimate of the time expected to comply.

Neither the public body nor the FOIA Coordinator are obligated to create a record, list, compilation, or summary of information which does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. All public records shall be retained per the City=s approved retention schedule. Neither the public body nor the FOIA Coordinator are obligated to provide answers to oral or written questions.

The FOIA Coordinator shall provide copies of any public record(s) as provided for in the Act and shall retain a copy of all written requests on file for a period of not less than one (1) year. The FOIA Coordinator will follow the provisions of Section 4 of this Policy.

#### SECTION 4. PROVISIONS FOR COPYING PUBLIC RECORDS

The City of Roseville shall adopt, by resolution, a schedule of fees for providing copies of public records. (Schedule of Fees. Appendix B.) All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the City Council. Postage and handling shall also be charged as applicable and shall include the exact postage, as well as the cost for envelopes or other containers used for mailing copies of the public records requested.

The FOIA Coordinator shall charge a fee for the labor involved with searching for, locating, examining, separating, deleting, reviewing, copying, mailing and necessary duplication for inspection a public record(s) as permitted by the Act. In determining whether to charge a fee for labor, the FOIA Coordinator shall consider the anticipated cost to the City, the need for a devoted staff member to adequately respond to the particular request, and similar factors. The estimated labor charges that are involved will be included on the FOIA Worksheet (see FOIA Worksheet, Attachment A). Labor costs shall be charged at the hourly wage plus fringe benefits calculated at an hourly rate not exceeding 50% of hourly wages of the lowest paid public employee capable of retrieving the information necessary to comply with the request as determined by the FOIA coordinator. When the City does not employ a person capable of providing the response and necessitating contract labor, contract labor may be charged at a rate not to exceed six times the state minimum hourly wage rate. All fees for employees and contract labor, shall be charged in increments of  $\frac{1}{4}$  of an hour and rounded down to the next lowest increment. The actual cost of preparing for mailing, plus postal delivery cost including postal delivery confirmation in the least expensive form, shall be chargeable. Where total fees and charges are reasonably anticipated to exceed Fifty Dollars (\$50.00), the public body is further authorized to require that fifty percent of the estimated fees and charges be paid in advance of the performance of the work as authorized by the Act. The balance must be paid prior to the release of the public record copies. The FOIA Coordinator shall not charge additional fees for certification of any copies.

A fee shall not be charged for the cost of search, examination, review, and the deletion and separation from nonexempt information, unless failure to charge a fee would result in unreasonably high costs to the City of Roseville because of the nature of the request in the particular instance, and the City of Roseville specifically identifies the nature of these unreasonably high costs. The cost of labor shall be imposed for mailing, necessary duplication for inspection, or for making copies of the record(s). Where it is necessary to copy the public record(s) before the exempt and nonexempt materials are separated so that the nonexempt material may be made available for examination or inspection, labor costs for copying shall be imposed.

The City of Roseville has limited in-house capabilities for copying photographs, audio or videotapes, microfilms, maps or plans. If a person requests copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body, or contract labor is required to deliver and/or pick up the public records and/or copies of public records, the labor costs as outlined above and applicable mileage (at City rates) will also be applied to the charges to the person(s) requesting the public records.

Copy fees and mailing charges for future issuances of regularly published public records will be arranged through the FOIA Coordinator. A person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record(s) for a period of time, not to exceed six months, unless extended. The FOIA Coordinator must sign the request form to confirm that the public record is one that is regularly published.

The City requires that an escrow deposit of \$50.00 be paid when a request for copies of regularly published public records is made to the FOIA Coordinator. The escrow must be made to the Clerk=s Office prior to receiving any regularly published public records. The City will charge against the escrow for the costs of copying and postage as outlined in Section 4. There will be no labor charges since this must be a public record that is routinely developed. An account sheet of the number of copies and costs for mailing will be maintained by the FOIA Coordinator. If the escrow deposit is reduced to \$5.00 or less prior to the expiration of the request, the FOIA Coordinator will contact the person for an additional deposit or termination of the request. (See FOIA Worksheet for Future Issuances. Appendix C).

#### SECTION 5. PROCEDURES OF THE PUBLIC BODY IN PROCESSING A FOIA REQUEST

After a person has made a written request for a public record in accordance with the Act, the FOIA Coordinator shall respond within five (5) business days in one of four ways:

- a. Grant the request.

If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will contact the person to arrange for inspection at a reasonable time.

If the request indicates that the person wishes to have copies of a public record prepared and/or mailed, the FOIA Coordinator may first mail a FOIA Worksheet to the person and request a fifty percent payment of the anticipated charges and fees.

Upon receiving the person=s executed FOIA Worksheet, where required, along with the payment due, the FOIA Coordinator will respond by providing those public records.

- b. Issue a written notice denying the request. The notice of denial shall include:
  - i. an explanation as to why the requested public record is exempt from disclosure in accordance with the Act, or
  - ii. an explanation that the requested public record does not exist under the name given by the person or another name reasonably known to the public body, or
  - iii. an explanation or general description of information which had to be separated or deleted from the public record pursuant to Section 6 of this Policy.

In addition to the explanations noted above, the denial shall also include an explanation of the person=s right to appeal the denial to the City Council and/or seek judicial review in accordance with the Act.

- c. Grant the request in part, and issue a written notice denying the request in part. In the latter instance, the public records exempted from disclosure should be treated as in (2) above.
- d. Issue a written notice extending the time in which to respond to the request by ten (10) business days explaining the reason for the need for additional time and estimating the actual time to complete the response. (Notice of Ten Day Extension. Appendix E.)

Where a written request is received which does not sufficiently describe the public records requested so as to enable the FOIA Coordinator to locate same, the FOIA Coordinator may send notice to the person requesting a clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request for purposes of the Act or this Policy.

#### SECTION 6. PROCEDURES FOR SEPARATION OF RECORDS

If a request is made for an existing public record that included information which is exempt from disclosure under the Act and information which is not exempt, the FOIA Coordinator must separate the material and make the non-exempt material available for examination and/or copying. Additionally, the FOIA Coordinator is directed to generally describe the material, which had to be separated, unless doing so would reveal the contents of the exempt information, and thus defeat the purpose of the exemption. The labor costs associated with such procedures shall be treated in accordance with Section 4.

#### SECTION 7. DESIGNATION OF FOIA COORDINATOR

The City Clerk is hereby designated to be the City=s FOIA Coordinator. In addition, the following officers shall be authorized to act as FOIA Coordinator designees: the Deputy City Clerk, the Fire Department Chief, the Police Department Records Officer, the Police Chief, and

the Deputy Police Chief. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records and approve denials in accordance with MCL 15.235(4) and (5).

#### SECTION 8. APPEALS

In accordance with the Act, where a person's request for a public record is denied, in whole or in part, the person shall be entitled to file a written appeal of the decision in accordance with the following process:

- a. The person shall be advised by the FOIA Coordinator of the right to file a written appeal to the City Council. The appeal shall be considered as delivered on the date of the next regular City Council meeting, following receipt of the appeal. The appeal must clearly be marked with the word "appeal" and identify the reason or reasons for appeal.
- b. Where a written appeal is received by the City in accordance with the Act, the City Council shall either: (i) place the appeal on the agenda for the next regularly scheduled meeting where unusual circumstances are found to exist; or (ii) consider and decide the appeal at the meeting at which it was received; or (iii) direct that a special meeting be held to consider whether the appeal should be scheduled. In its consideration of any appeal, the City Council shall review the materials submitted by the appellant, any written comments received from the FOIA Coordinator, and such other information as the City Council deems necessary. A decision shall be made within ten (10) business days following the date of the first City Council regular meeting following receipt, unless extended for not more than ten (10) additional business days as a result of unusual circumstances.
- c. The City Council may deliberate and take one of the following actions in response to the filing of an appeal:
  1. Reverse the disclosure denial.
  2. Issue a written notice to the requesting person affirming the disclosure denial.
  3. Reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.

#### SECTION 9. PROCEDURES FOR FUTURE REQUESTS FOR FAILURE TO PAY PAST REQUESTS.

Where the City has granted and fulfilled a written request and not been paid in full, the City may require a deposit up to 100% of the estimated fee for future requests if the final fee of the unpaid request was not more than 105% of the estimated fee, the records were made available subject to payment within time frames under the Act, and 90 days have passed without records being paid

for and picked up. The requirement of a deposit shall be removed if the requestor shows proof of prior payment in full, full payment is made, or 365 days have passed since the written request for which full payment was not remitted. The required deposit is considered as a fee.

SECTION 10. AFFIDAVIT OF INDIGENCY.

A public record may be made and copies furnished without charge for the first \$20.00 by the requestor furnishing 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 denied, the public body shall furnish a written response specifying the reason for ineligibility. A person shall only be permitted to obtain records twice during a calendar year under such circumstances. A person also may be required to make a statement in the affidavit that the request is not being made in conjunction with an outside party. Additionally, a non-profit organization designated by the state to carry out activities relating to the developmental disabilities assistance and protection and advocacy of persons for mental illness may be eligible as described in the Act. Affidavit of Indigency Appendix D.

SECTION 11. APPEAL FROM CLAIMED FEE IN EXCESS OF THAT REQUIRED UNDER THE ACT.

If the City requires a fee exceeding amounts permitted under the procedures and guidelines set forth, the requestor may appeal to the City Council in a written document marked "appeal" and within ten (10) business days, the City Council shall act to waive the fee, reduce the fee, uphold the fee, or if necessary, extend for not more than ten (10) additional business days to make a decision. The City is not considered to have received the appeal until the first regularly scheduled City Council meeting.