

CITY OF LUNA PIER

Procedures and Guidelines on the Freedom of Information Act

General Policy Statement

The City of Luna Pier intends to promote open government by providing full and complete information on its activities and records, in complete compliance with the Michigan Freedom of Information Act, (FOIA) Public Act 442 of 1976, Michigan Compiled Laws Sections 15.231 to 15.246, as amended. The City determines that all persons, except those persons incarcerated in federal, state or local correctional facilities, are entitled to information regarding the affairs of City government and the official acts of those who represent them as public officials and public employees. The City also understands that the interests of its citizens, the effective operation of City government and the privacy rights of employees and other individuals are better served in certain situations by the protection of some information.

The purpose of this statement of the FOIA procedures and guidelines of the City of Luna Pier is to assist those requesting information under FOIA and those providing responses under FOIA to understand the law and the standard practices that promote its public policies.

City Responsibilities

The City of Luna Pier will maintain public records in a condition and location that allows for retrieval and production to those requesting records.

The City of Luna Pier will appoint a FOIA Coordinator on an annual or as-needed basis. The current FOIA Coordinator will maintain the appointment until a successor is appointed.

The City will provide, free of charge, both a summary of instructions for FOIA requests and this more detailed explanation of procedures and guidelines on the City website and at the Municipal Building.

The officials and employees of the City of Luna Pier are allowed to provide information on City operations and affairs, and may give copies of public records, without requiring a written FOIA request from the person seeking the information.

The City is not required to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor any City employee is required to answer any questions contained in FOIA requests for records.

The FOIA Coordinator will keep a copy of each written request for public records for at least one year after it is received.

Requesting a Public Record.

A person submitting a FOIA request to inspect or obtain copies of public records prepared, owned, used, possessed, or retained by the City of Luna Pier must do so in writing. The request must sufficiently describe a public record so as to enable a City employee to identify and locate the record. No specific request form is required.

Requests for information may be sent by mail, in person, or delivery service to the **City of Luna Pier**, P.O. Box 375, 4357 Buckeye Street, Luna Pier, MI 48157, or by e-mail to cityhall@cityoflunapier.com. City employees will promptly forward the request to the FOIA Coordinator.

A request may ask that the public record be provided in a non-paper media. The City will comply if the City has the technological capability to provide the record in the requested 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 six months and may be renewed.

A person who makes a verbal request for information to a City employee will be told that the information is available on the official City website, if the employee believes that is the case. This will be done without charge.

A person who is incarcerated in a federal, state or local correctional facility is not entitled to submit a FOIA request. The City FOIA Coordinator shall deny all such requests.

Responses to Requests

Unless otherwise agreed, the City of Luna Pier will respond to a request for information within five business days of receiving a request, in one or more of the following ways:

- Grant the request.
- Deny the request, in writing.
- Grant part of the request, and deny part, in writing.
- Notify, in writing, the person requesting the public information that the City needs an additional ten business days to respond, due to the nature of the request.
- Notify the requester that the information is available at no charge on the City's website.

Granted Requests for Information

If the request is granted or granted in part, the FOIA Coordinator may require that the requester pay the allowable costs the City incurs before the public records are provided. In such case, the FOIA Coordinator will give the requester an itemized statement of the costs the City incurs in responding to the request. The itemized statement will also contain the link to the City's official website where the Summary Instructions and these Procedures and Guidelines are available.

If the allowable costs of responding to the FOIA request is \$50.00 or less, the requester will receive the public records promptly upon payment of the allowable costs.

If the City calculates the allowable costs to be over \$50, then the City FOIA Coordinator will require a deposit before processing the request. A deposit will also be required in some circumstances if the requester has not fully paid for a previously granted request.

If the City notifies the person requesting the records that the records are available on the City's official website, and the requestor nonetheless wants copies on paper or another media, the City will process the request promptly upon payment of the allowable and itemized costs, as estimated by the City in good faith.

Denied Requests for Information

If the City denies all or part of a request, the City FOIA Coordinator will notify the person who requested the information of the reason or reasons for the denial. The notice will be in writing. If applicable, the notice may state one or more of the following reasons for the denial:

- The requested information is exempt from disclosure. The reason for the exemption will be stated.

- The requested information does not exist, or does not exist under the name or description used by the requester, or another name reasonably known to the City.

The notice of the denial will also inform the requestor of the right to appeal, to the Mayor of the City of Luna Pier or directly to Circuit Court by a civil action filed with the Circuit Court Clerk, in the Monroe County Courthouse, 106 East First Street, Monroe, MI 48161, within 180 days. An appeal to the Mayor should state APPEAL near the top of the first page and should state the reason or reasons the request should be granted. The Mayor will decide the appeal within ten business days. The Mayor's decision may also be appealed to the Circuit Court by filing a civil action within 180 days.

In the Circuit Court appeal, if the person requesting records prevails, the Court will award reasonable attorneys' fees, costs, and disbursements. If the person requesting records and the City both prevail in part, the Court may award all or a portion of reasonable attorneys' fees, costs, and disbursements. If the Court decides that the City has arbitrarily and capriciously violated FOIA by refusal or delay in disclosing or providing copies of a public record, the Court will order the public body to pay a civil fine of \$1,000.00 to the State of Michigan and will award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person who submitted the FOIA request.

If the Court determines that the City willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the Court will order the City to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence, to be paid to the State of Michigan.

Deposits

The City of Luna Pier FOIA Coordinator may require a deposit of one half of expected allowable costs for FOIA requests granted in whole or in part, if the costs are expected to exceed \$50.00.

If a request for public records is from a person who has not fully paid 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 of the current written request's increased estimated deposit.

A 100% deposit will not be required if any of the following apply:

- The individual 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
- Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the City.

Costs of Records

The City of Luna Pier will not charge a fee for the search, examination, review and deletion and separation of exempt from nonexempt information unless the failure to charge a fee would result in unusually high costs to the City because of the nature of the particular request, and the City specifically identifies the nature of these unreasonably high costs.

Any fees or costs charged by the City will be based on the actual cost of copying the requested records, whether on paper or an electronic media, including a portion of the labor costs. The City's charges for FOIA requests may include the following items:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs for a review of a record to separate and delete information exempt from disclosure.
- The actual cost of computer discs, flash drives or other digital media.
- The cost of duplication.
- Labor costs for duplication, including paper copies, electronic copies, or transferring via the internet or other means.
- The actual cost of mailing or sending records.

The City of Luna Pier will calculate labor costs in 15 minute increments, rounded down. The hourly wage of the lowest-wage City employee capable of doing the work will be used, regardless of who does the work. The City will add a percentage to the hourly wage rate to cover some or all of the cost of fringe benefits. The added percentage will not exceed the actual cost of fringe benefits nor will it exceed 50%.

Overtime will not be included in labor costs unless agreed to by the requester, and will not be used to calculate fringe benefit costs.

The City will charge the actual total incremental cost of paper copies of public records provided to the requestor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized, with 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. The City shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

The City will charge the actual and most reasonably economical cost of non-paper physical media, such as computer discs, flash drives and other digital media. The requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies, if the City has the technological capability necessary to comply with the request.

The City of Luna Pier will charge actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The City will not 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.

Labor charges will be reduced by 5% per day that the City of Luna Pier's response to a proper FOIA request is late, up to a 50% reduction in labor charges, if the lateness was willful and intentional, or if the City knew or should have known that a FOIA request was submitted when the City received it.

Waiver or Reduction of Costs

The Luna Pier FOIA Coordinator may waive or reduce the costs charged if in the sole judgment of the Coordinator, a waiver or reduction is in the public interest because the FOIA request primarily benefits the general public.

A person submitting a FOIA request may request a waiver of the first \$20.00 in costs by submitting an affidavit stating that the requester is indigent and receives public assistance, or stating other facts demonstrating an inability to pay because of indigency.

A person is not eligible to receive the waiver if the requester has previously received discounted copies of public records twice during the calendar year, or if the requester requests information in connection with other persons who are offering or providing payment to make the request.

The FOIA Coordinator will waive the first \$20.00 in chargeable costs for 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 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, 1974 PA 258, MCL 330.1931, and is accompanied by documentation of its designation by the state, if requested by the City.

Appeals of Costs

Any person submitting a FOIA request may file an appeal of the costs charged for the records with the Mayor, or by filing suit directly in Circuit Court in the Monroe County Courthouse, or both. Appeals to the Mayor must state APPEAL near the top of the first page and must identify the reasons the requested costs are excessive. Within ten business days, the Mayor will decide the appeal or will notify the requester that an additional ten days is required. If the Mayor upholds the costs charged in whole or in part, the Mayor's decision will explain the reasons the costs are required.

Regardless of whether an appeal to the Mayor was taken, a FOIA requestor may file a civil action within 45 days after receiving the City's or the Mayor's decision about the required costs. If the Circuit Court orders a reduction of 50% of the total costs, the Court may award attorney fees, costs and disbursements. Further, if the Court decides that the City acted arbitrarily and capriciously by charging an excessive fee, the Court will also award punitive damages of \$500.00.

This statement of the City of Luna Pier Procedures and Guidelines for the Freedom of Information Act and a summary of instructions are available at no charge and on the City's website, <http://www.cityoflunapier.com>.