

# **Mid Michigan Waste Authority Procedures, Guidelines, and Fees for FOIA Requests**

## **1. Summary of Procedures and Guidelines**

- a. This document shall serve as the written summary of the Mid Michigan Waste Authority's ("MMWA") FOIA procedures and guidelines. This document shall be posted on The MMWA's website and a link to the website must be returned with every response to a FOIA request. A person may request a free paper copy of these procedures and guidelines at The MMWA's office.

## **2. FOIA Coordinator**

- a. The FOIA Coordinator shall be the MMWA Administrative Director. If the MMWA Administrative Director is unavailable or unable to answer the request the alternate FOIA Coordinator shall be the MMWA's Attorney.

## **3. FOIA Request.**

- a. **Form of Request.** A request must be made in writing and provided to the FOIA coordinator of the MMWA in person, by mail, fax, or email. A writing includes a completed MMWA FOIA Request Form, or a letter, fax, email or any other "writing." A verbal request may be submitted, but it is proper for a MMWA employee to record the request on the MMWA's FOIA request form.
- b. **What Can Be Requested.** A person may request to inspect, copy, or receive a copy of a public record. A request must sufficiently describe the public record so as to enable MMWA employees to identify and find the requested record. The MMWA is not obligated to create a new public record or make a compilation or summary of information which does not already exist.
- c. **Who May Request.** Anyone may request a public record; there are no residency requirements. However, prisoners in state, county, or federal correctional facilities are not entitled to make requests.
- d. **Time Period of Request.** A person may request to subscribe to future issues of public records that are created, issued, or disseminated by the MMWA on a regular basis. A subscription is valid for up to 6 months and can be renewed.
- e. **Receiving FOIA Request.**
  - i. For a FOIA request that is delivered by postal mail or that is hand delivered to the FOIA coordinator, the request is considered "received" for the purpose of determining the time for responding on the business day it is delivered.
  - ii. For a FOIA request that is delivered by facsimile, electronic mail, or other electronic submission, the request is not "received" by the MMWA's FOIA coordinator until one (1) business day after the electronic transmission is made. If the electronic mail is sent to the FOIA

coordinator's spam or junk-mail folder the request is not "received" until 1 day after the FOIA coordinator becomes aware of the request. All MMWA employees must check their spam or junk-mail folder at least once weekly.

- iii. The FOIA request should be date stamped on the date that it is received by the FOIA coordinator; an electronic request should be printed and date stamped. A log should be kept of all incoming FOIA requests.
- iv. The MMWA shall keep a copy of all written FOIA requests for public records received by the MMWA on file for a period of at least one year.

#### **4. Timeline.**

- i. **5 Business Days.** Not more than 5 business days after receiving a request, the MMWA must respond to a request for a public record by:
  - a. Granting the request; or
  - b. Issuing a written notice to the requesting person denying the request; or
  - c. Granting the request in part and issuing a written notice to the requesting person denying the request in part; or
  - d. Issuing a notice extending for not more than 10 business days the period during which the MMWA shall respond to the request, as discussed in sub-paragraph (iii) The MMWA may not issue more than 1 notice of extension for a particular request.
- ii. If no response is sent within 5 business days it may constitute a final denial.
- iii. **10 Business Days.** The MMWA may notify the requestor in writing within the first 5 business days after receiving a FOIA request that the MMWA is electing to extend its response time by 10 business days.

#### **5. Responding to FOIA Request.**

##### **a. General.**

- i. A response to a FOIA request shall be made on the attached FOIA Response Form.

##### **b. Response Options.**

- i. **Granted.** Use this response if all documents requested are included.
- ii. **Granted in part.** Use this response if only some documents requested are found or if some records requested are exempt.
- iii. **Denied.** Use this response if no records are found to be applicable to the request or if all records applicable are exempt. A letter explaining reasons for denial must be sent to requestor.

- iv. **Deficient Request.** If a request does not sufficiently describe a public record, the FOIA Coordinator may either issue a Notice of Denial indicating the request is insufficient or seek clarification or amendment of the request by the requestor. Any clarification or amendment of the request by the person making the request will be considered a new request.

c. **Written Notice of Denial Requirements.**

- i. An explanation of the basis for denial giving the statute that exempts the record from disclosure, if the record is exempt.
- ii. A certificate from the MMWA stating the public record does not exist, if it does not.
- iii. A description of the public record or information that is separated or deleted, if any portion is separated or deleted.
- iv. A full explanation of the requester's right to: (1) submit a written appeal that specifically states the word "appeal" to the head of the MMWA which identifies the reasons for reversal, or (2) commence a civil action seeking judicial review of the denial in the Saginaw County Circuit Court within 180 days after the MMWA's final denial. If a person prevails in a court appeal they may be entitled to receive their attorney fees, costs, and disbursements, as well as actual compensatory damages, and punitive damages of \$1,000.00.
- v. The Notice of Denial shall be signed by the FOIA Coordinator.

d. **Procedural Safeguards.**

- i. Information that must be redacted: (1) social security numbers; (2) exempt information, pursuant to MCL 15.243(1 )(a)-(y); (3) HIPAA protected information.

e. **Form of Disclosure.**

- i. A disclosure of public records can be made by providing paper copies or nonpaper physical media such as computer discs, computer tapes, or other digital or similar media.
- ii. The requestor may stipulate the public records be provided on nonpaper physical media, emailed, or otherwise electronically provided to him or her in lieu of paper copies, unless the MMWA lacks the technological capability to do so.

**6. Fees**

- a. **General.** A fee may be charged for actual incremental costs of copying, reproducing or delivering of a request for a public record. Labor costs associated with copying, reproducing, searching, locating, or redacting records may be charged if it would result in an unreasonably high cost to the MMWA. The MMWA may require that

payment be made in full for allowable fees before the public record is made available to the requestor.

- b. **Copies.** The MMWA may charge the actual, incremental copying cost, for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. The fee shall not exceed 10 cents per sheet of paper.
- c. **Nonpaper Physical Media.** The MMWA may charge the actual, incremental cost of the nonpaper physical media such as computer discs, computer tapes, or other digital or similar media.
- d. **Mailing.** The MMWA may charge the actual postage/shipping charges and actual cost of an envelope or mailer. The MMWA shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, and shall utilize the least expensive means of postal delivery confirmation.
- e. **Search and Separation Fees.** The MMWA may also charge a fee for labor costs for search, examination, and review where failure to charge a fee would result in unreasonably high costs to the MMWA. No fee shall be charged if the time takes one-half (1/2) hour or less. A fee may also be charged for labor costs to separate exempt information from public records if it would result in unreasonable high cost to the MMWA. No fee shall be charged if the time takes one-half (1/2 hour or less).
- f. **Labor Costs.** Where a labor fee is charged because it would result in unreasonably high cost to the MMWA, the fee shall be the hourly wage of the lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. That employee would normally be an employee within the office or department which the subject records are located. Labor costs shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.
- g. **Contracted Labor Costs.** If the MMWA does not have an employee who is capable of separating and deleting exempt information, it may use contracted labor. The contracted labor fee shall be computed in the same manner as employee costs, in 15 minute increments, rounding down. The contracted labor hourly wage shall not exceed 6 times the state minimum wage.
- h. **Estimation of Fees and Prepayment.** The MMWA FOIA Coordinator shall provide a good faith estimate of costs for any disclosure anticipated to cost \$50.00 or more to prepare. A deposit of 50% of the estimated cost shall be required before the process of preparing a disclosure is initiated. Any overage paid to the MMWA shall be returned. Any additional balance due shall be paid to the MMWA before the disclosure will be made available to the requester. The time period to respond to a FOIA request shall be paused while the MMWA is awaiting its requested deposit.
- i. **Prepayment for Previous Requestor.** If the MMWA has not been paid in full for a previous FOIA request by a person, the MMWA may require 100% deposit on any subsequent request if: (1) final fee did not exceed 105% of estimated fee, (2) public

records contained the information being sought and are still in the MMWA's possession, (3) records were made available within the required timeframe, (4) 90 days have passed since the records were ready for pickup, (5) the individual is unable to show proof of payment, (6) the MMWA provides an itemized estimate of current fees due.

- j. **Limitation on Fees.** The fee must be limited to actual duplication, mailing, and labor costs. The MMWA shall utilize the most economical means available for making copies of public records. Fees shall not apply to records covered by MCL 15.234(4).
- k. **Discount for Untimeliness.** Labor costs may be reduced by 5% for each day the MMWA exceeds the time permitted to respond to a request, with a maximum 50% reduction.
- l. **Waiver for Indigents.** The first \$20.00 of a fee shall be waived for a person who is on welfare or presents facts showing inability to pay because of indigency.
- m. **Waiver for Certain Nonprofits.** The first \$20.00 of a fee shall be waived for a nonprofit organization designated by the state to carry out activities under the Developmental Disabilities Assistance and Bill Of Rights Act or the Protection And Advocacy For Individuals With Mental Illness Act.
- n. **Limitation for Information Available on Website.** The MMWA shall not charge for information requested that is available on the MMWA's website. In this scenario, only a link to the website shall be given as a response to the FOIA request. If a person still requests paper copies of the information, a fee may be charged.

## 7. Appeals

- a. **Appeal of a Denial of a Public Record.** Freedom of Information Act, MCL 15.231-.246 provides for the following appeal rights:
  - i. **In General.** A person may appeal a denial of a public record to: 1) the MMWA Administrative Director; the request must be in writing and state the word "appeal", or 2) the Saginaw County Circuit Court within 180 days after the MMWA's final determination to deny the request.
  - ii. **Appeal to MMWA.**
    - i. If the MMWA makes a final determination to deny all or a portion of a request, the requesting party may submit a written appeal to the head of the MMWA. For purposes of the appeal, the head of the MMWA shall be considered the Administrative Director. The written appeal must specifically state the word "appeal," and it must identify the reason or reasons for reversal of the denial.
    - ii. Within 10 business days after receiving a written appeal, the head of the MMWA must do 1 of the following:
      - 1. Reverse the disclosure denial;

2. Issue a written notice to the requesting person upholding the disclosure denial;
3. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part; or
4. Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the MMWA shall respond to the written appeal. The MMWA will not issue more than 1 notice of extension for any particular written appeal.

iv. **Appeal to Circuit Court.**

1. If a court that determines a public record is not exempt from disclosure, it shall order the MMWA to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record.
2. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in full in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or MMWA prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.
3. If the court determines that the MMWA has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the MMWA to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

b. **Appeal of an Excessive FOIA Processing Fee.**

- i. **In General.** If a requestor believes that the fee charged by the MMWA to process a FOIA request exceeds the amount permitted by state law, he or she must first appeal to the head of the MMWA by submitting an appeal for a reduction of the fee. The appeal must be in writing, must state the word "appeal" and must identify how the required fee exceeds the amount permitted under the MMWA's procedures and guidelines or MCL 15.234.

ii. **Appeal to MMWA.**

1. Within 10 business days after receiving the written appeal, the Administrative Director of the MMWA shall do 1 of the following:
  - a. Waive the fee;
  - b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under MCL 15.234 that supports the remaining fee. The determination shall include a certification from the Administrative Director of the MMWA that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and MCL 15.234;
  - c. Uphold the fee and issue a written determination to the requesting person indicating the specific basis under MCL 15.234 that supports the required fee. The determination shall include a certification from the Administrative Director of the MMWA that the statements in the determination are accurate and that the fee amount complies with the MMWA's publicly available procedures and guidelines and MCL 15.234; or
  - d. In unusual circumstances, issue a notice extending the time to respond to the written appeal by 10 additional business days. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The MMWA will not issue more than 1 extension for any particular written appeal.

iii. **Appeal to Circuit Court.**

1. Within 45 days after receiving notice of the required fee or within 45 days after a determination of an appeal that was submitted to the head of the MMWA has been issued the requesting person may commence a civil action in Saginaw County Circuit Court seeking a fee reduction.
2. If a court determines that the MMWA required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or MCL 15.234, the court shall reduce the fee to a permissible amount.
3. If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees,

costs, and disbursements. The award shall be assessed against the public body liable for damages.

4. If the court determines that the MMWA has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the MMWA to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.



## Mid Michigan Waste Authority FOIA Request Fee Worksheet

Date request received: \_\_\_\_\_ Date of Response: \_\_\_\_\_

Record(s) requested: \_\_\_\_\_

### I. Duplication Costs

Copy Cost:

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
Cost per copy                      Number of copies                      Total copy cost

Nonpaper Physical Media / Electronic Record Cost:

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
Cost per CD                      Number of disks                      Total disk cost

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
Cost per other electronic media                      Number                      Total other electronic cost

### II. Mailing Cost:

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
Cost per envelope                      Number of envelopes                      Total envelope cost

Plus Postage:

- ☐ U.S. Mail
- ☐ Fed Ex
- ☐ DHL
- ☐ Other: \_\_\_\_\_

+ \_\_\_\_\_  
Total Postage Cost

= \_\_\_\_\_  
**Total Mailing Cost**

**III. Labor Cost:<sup>1</sup>**

$$\frac{\text{Hourly labor rate}}{\text{Hourly labor rate}} \times \frac{\text{Fringe benefit multiplier}}{\text{Fringe benefit multiplier}} \times \frac{\text{Number of hours}}{\text{Number of hours}} = \frac{\text{Total labor cost}}{\text{Total labor cost}}$$

**IV. Less Waiver for Indigent Person (\$20.00):<sup>2</sup>**

**Total amount waived**

**IV. Total Charges**

$$\frac{\text{Duplication costs}}{\text{Duplication costs}} + \frac{\text{Mailing costs}}{\text{Mailing costs}} + \frac{\text{Labor costs}}{\text{Labor costs}} - \frac{\text{Amount waived}}{\text{Amount waived}} = \frac{\text{Total}}{\text{Total}}$$

<sup>1</sup> Labor costs will be calculated using the lowest paid Department employee capable of each task. If more than one hourly rate is used, they will be listed on other copies of this form.

<sup>2</sup> You must submit an affidavit of indigency to qualify for this fee waiver.

**Mid Michigan Waste Authority  
FOIA Request Form**

**Date:** \_\_\_\_\_

**Requested by:** \_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State

**Phone:** \_\_\_\_\_

**Method of Request:** ☐Mail ☐In-Person ☐Fax ☐E-Mail ☐Oral

**Description of Requested Information (be as specific as possible):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Method of Delivery:** ☐Paper Copies (please mail) ☐Paper Copies (will pick-up) ☐E-Mail  
☐On-Site Record Inspection ☐Other: \_\_\_\_\_

**Who Received Request:** \_\_\_\_\_

**Date Received:** \_\_\_\_\_ **Effective business date of receipt:** \_\_\_\_\_

**Administrative Director's Signature:** \_\_\_\_\_

***PLEASE FORWARD TO MMWA ADMINISTRATIVE DIRECTOR  
IMMEDIATELY***

## Mid Michigan Waste Authority FOIA Response Form

The MMWA's procedures, guidelines, and fees for FOIA requests are maintained on the MMWA's website, at the following link: \_\_\_\_\_.

### Response to FOIA Request:

1. Granted.
2. Granted in part. Explanation for partial denial:

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3. Denied. Explanation of denial:

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4. Deficient Request. Explanation:

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If your FOIA request was denied in whole or in part you have the following appeal rights:

- (1) Submit a written appeal that specifically states the word "appeal" to the MMWA Administrative Director which identifies the reasons for reversal.
- (2) Seek judicial review of the denial in Saginaw County Circuit Court within 180 days after the MMWA's final denial. If a person prevails in a judicial appeal they may be entitled to receive their attorney fees, costs, and disbursements, as well as actual compensatory damages, and punitive damages of \$1,000.00.

MMWA Administrative Director Signature: \_\_\_\_\_