

## **Dickinson County Library**

### **FOIA Procedures and Guidelines**

It is the policy of the Dickinson County Library that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to the public records of the Dickinson County Library. The people shall be informed so that they can fully participate in the democratic process.

The Dickinson County Library shall comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner.

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

The Dickinson County Library has established the following written procedures and guidelines to implement the FOIA and will provide a written public summary of the specific procedures and guidelines on how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

#### **Section 1: FOIA Coordinator and Records**

The Dickinson County Library, pursuant to MCL 15.236, designates the Administrative Assistant as the FOIA Coordinator. If the Administrative Assistant is not available, the Library Director will complete the request.

The FOIA Coordinator shall be responsible for accepting and processing requests for the Dickinson County Library's public records under this Act and shall also be responsible for approving a denial.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a 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 Library 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 shall keep a copy of all written requests for public records received by the Library on file for a period of at least one year.

This Procedures and Guidelines document will be maintained on the Dickinson County Library's website at: [www.dcl-lib.org](http://www.dcl-lib.org)

#### **Section 2: Requesting a Public Record**

A person has a right to inspect, copy, or receive copies of the public records of a public body. Requests must be in writing with enough specificity to enable the FOIA Coordinator to locate the records.

Written requests for public records may be submitted in person or by mail to the Dickinson County Library; 401 Iron Mountain Street; Iron Mountain, MI 49801. Requests may also be submitted

electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The library 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 Dickinson County Library on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

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 Coordinator will deny all such requests.

### **Section 3: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, the Library will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The Library will respond to a 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 written notice indicating that due to the nature of the request the Library needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Library's website ([www.dcl-lib.org](http://www.dcl-lib.org)).
- Issue a written notice indicating that the public record requested does not exist.

#### ***When a request is granted:***

If the request is granted, or granted in part, the FOIA Coordinator 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 and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the Library's website at: [www.dcl-lib.org](http://www.dcl-lib.org), a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents.

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

In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the Library to process the request and also provide a best efforts estimate of a time frame it will take the Library to provide the records to the requestor.

***When a request is denied or denied in part:***

If the request is denied or denied in part, the FOIA Coordinator 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 written response that the requested record does not exist under the name or description provided by the requestor; 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 Dickinson County Library Director or seek judicial review in the Dickinson County Circuit Court;
- 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.

If a request does not sufficiently describe a public record, the FOIA Coordinator 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.

***Requests to inspect public records:***

The Library 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 Library records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal operations.

**Section 4: Fee Deposits**

If the fee estimate is expected to exceed \$50 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fees.

If a request for public records is from a person who has not paid the Library in full 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 Library's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Library to provide the records;
- Ninety (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 Library; 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;
- The Library is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the Library.

### **Section 5: Calculation of Fees**

A standard form will be provided for the detailed itemization of any fee amount permitted under FOIA.

A fee may be charged for the labor cost of copying/duplication.

A fee will *not* be charged for the labor 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 Library because of the nature of the request in the particular instance, and the Library specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services compared to the costs of the library's usual FOIA requests, not compared to the library's operating budget.

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

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan FOIA statute permits the Library to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Library.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Library.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the Library's website if you ask for the Library to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for

copies of records already on the library's website if you ask for the library to make copies.

- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Library employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Overtime wages will not be included in labor costs unless agreed to by the requestor.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).

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 Library has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Library will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the Library's technology infrastructure.

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 Library will provide records using double-sided printing, if it is 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 Library may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Library must:

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

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

### **Section 6: Waiver of Fees**

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 it is in the public interest because it can be considered as primarily benefitting the general public.

### **Section 7: Discounted Fees**

#### ***Indigence***

The FOIA Coordinator will discount 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 indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the Library 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.

#### ***Nonprofit organization advocating for developmentally disabled or mentally ill individuals***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal 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:
  - 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.
  - Is accompanied by documentation of its designation by the state, if requested by the public body.

### **Section 8: 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 appeal to the Library Board by filing an appeal of the denial with the office of the Dickinson County Library Director.

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.

The Library Board is not considered to have received a written appeal until the first regularly scheduled Library Board meeting following submission of the written appeal.

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

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Library Board shall respond to the written appeal. The Library Board shall not issue more than 1 notice of extension for a particular written appeal.

If the Library Board fails to respond to a written appeal, or if the Board upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court.

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

If the court determines a public record is not exempt from disclosure, it shall order the Library to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Library prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the Library 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 Library 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.

### **Section 9: Appeal of an Excessive FOIA Processing Fee**

“Fee” means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the Library to process a FOIA request exceeds the amount permitted by state law, he or she must first appeal to the Library Board by submitting a written appeal for a fee reduction to the office of the Dickinson County Library Director.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

The Library Board is not considered to have received a written appeal until the first regularly scheduled Board meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the Library Board 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;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Board will respond to the written appeal. The Library Board shall not issue more than 1 notice of extension for a particular written appeal.

Where the Library Board reduces or upholds the fee, the determination must include a written response from the Library Board that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the Library Board's determination of an appeal, the requesting person may commence a civil action in Dickinson County Circuit Court for a fee reduction.

If a civil action is commenced against the Library for an excess fee, the Library is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless *one* of the following applies:

- The Library does not provide for appeals of fees,
- The Library Board failed to respond to a written appeal as required, or
- The Library Board issued a determination to a written appeal.

If a court determines that the Library required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

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.

If the court determines that the Library has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Library 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.