

CITY OF MONTROSE
FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

I. PURPOSE.

The City of Montrose (the “City”) adopts the public policy set forth in the Michigan Freedom of Information Act, 1976 PA 442 (“FOIA”), that all persons, except those persons incarcerated in state, county or federal correctional facilities, 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 public employees, consistent with the FOIA. Access to information is important so that people may fully participate in the democratic process. These Procedures and Guidelines are enacted in compliance with the requirements set forth in Section 4(4) of the FOIA.

II. FOIA COORDINATOR.

The City appoints the City Clerk as FOIA Coordinator. The FOIA Coordinator will respond to requests in accordance with the FOIA. An employee of the City who receives a request for a public record must promptly forward that request to the FOIA Coordinator. The FOIA Coordinator is responsible for accepting, processing and approving a denial of a request and signing the written notice of denial. The FOIA Coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the City’s public records, and in approving a denial.

III. REQUEST REQUIRED.

A. *Requestor; Public Record.* An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity, except those persons incarcerated in state, county or federal correctional facilities, may request public records from the City. “Public Record” has the meaning as defined in Section 2(e) of the FOIA.

B. *Verbal Requests.* The City may, but is not required to, provide public records in response to a verbal request, unless such verbal request is for information that the City believes is available on its website. In such case, an employee, where practicable and to the best of his or her knowledge, shall inform the requestor about the pertinent website where the information is available.

C. *Written Requests.* Except as provided in Section III.B above, a person desiring to inspect, copy or receive a copy of a public record shall make a written request for the public record to the City. A request can be made through a letter, in person, or sent by electronic transmission.

1. Where to Send the Request. Whenever possible, requests for public records should be directed to the following recipients so that the information can reach the FOIA Coordinator:

- a. By mail or in person:

City of Montrose
Attn: FOIA Coordinator
139 S. Saginaw Street
Montrose, MI 48457

- b. By e-mail: clerk@cityofmontrose.us

2. Sufficient Description. Requests in writing must identify the public record sufficiently to allow the City to find the requested record. If not, the request may be denied on that basis.

3. Requester Contact Information Required. A request from a person must include the following (unless the request is from an individual who qualifies as indigent under Section 4(2)(a) of the FOIA):

- a. the requesting person's complete name, address, and contact information, and

- b. if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual.

An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address.

4. Electronic Transmissions. For requests sent by electronic transmission, the following shall apply:

- a. Electronic Transmissions. A written request made by electronic mail or other electronic transmission is not received by the City's FOIA coordinator until 1 business day after the electronic transmission is made.

- b. Spam or Junk Mail Folder. If a written request is sent by electronic mail and delivered to the City's spam or junk mail folder, the request is not received until 1 day after the City first becomes aware of the written request. The City shall note in its records both the time a written request is delivered to its spam or junk mail folder and the time the City first becomes aware of that request. The FOIA Coordinator shall be responsible for routinely monitoring the spam and junk mail folders in order to determine whether they contain any FOIA requests.

5. Specify Format. The requestor may specify whether he or she would like to inspect, receive paper copies, or receive the public records on nonpaper

physical media. The City is only required to comply with the request for specified nonpaper physical media if it has the technological capability necessary to provide the public records on the requested nonpaper physical media in the particular instance.

6. Subscription. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

IV. PROCEDURES FOR RESPONDING TO WRITTEN FOIA REQUESTS.

A. *Response*. Unless otherwise agreed to in writing by the person making the request, the City shall respond to a request within 5 business days after it receives the request by:

1. Granting the request (which would include notifying the requestor that all or a portion of the public records requested are available on the website, if applicable);
2. Issuing a written notice to the requesting person denying the request;
3. Granting the request in part and issuing a written notice to the requesting person denying the request in part (which would include notifying the requestor that all or a portion of the public records requested are available on the website if applicable); or
4. Issuing a notice extending for not more than 10 business days the period during which the City shall respond to the request.

The City's written response shall be considered the final determination regarding the FOIA request.

B. *Understanding the City's Response*. The City has an obligation to respond as required under the FOIA. If the City grants a written request in full, the requestor will receive a notice indicating that it has been granted. However, if the request is denied or denied in part, the City shall provide the following information:

- 1 Pursuant to Section 13 of the FOIA, the City may exempt certain documents from disclosure. The FOIA Coordinator will review the request to determine if any exemptions apply. The FOIA Coordinator may request assistance from the City's Attorney regarding the application of exemptions. If exempt, the City shall provide an explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

2. A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the City, if that is the reason for denying the request or a portion of the request. The denial letter may indicate that the letter serves as the certificate as required by the FOIA.

3. A description of a public record or information on a public record that is separated or deleted pursuant to Section 14 of the FOIA, if a separation or deletion is made.

4. A full explanation of the requesting person's right to do either of the following:

a. Submit to the City Council a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial; or

b. Seek judicial review of the denial under Section 10 of the FOIA.

5. Notice of the right to receive attorneys' fees and damages as provided in Section 10 of the FOIA, MCL 15.240, if, after judicial review, the court determines that the City has not complied and orders disclosure of all or a portion of a public record.

C. *No Obligation to Create Records.* The FOIA does not require the City to make a compilation, summary, or report of information. Further, the City is not required to create a new public record in order to respond to a request.

D. *Documents Available on Website.* If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the City shall notify the requestor in its written response. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.

If all or a portion of the requested records are available on the website and the City has included the website address in its written response but the requestor wants the public records in a paper format or other nonpaper physical media, the City shall provide the public records in the specified format. On the detailed itemization, the City shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website.

V. FEES.

The City may 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 because it has established, made publicly available, and follows these Procedures and Guidelines and the FOIA. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor; the cost of search, examination and review; and the deletion and separation of exempt information from non-exempt information as set forth more fully in these Procedures and Guidelines. The FOIA Coordinator shall provide a detailed itemization of costs on a standard form, as required under Section 4(4) of the FOIA (“Detailed Itemization”). The total fee shall not exceed the sum of the following components:

A. *Labor Costs:*

1. Searching for, Locating and Examining.

a. The City may charge for searching for, locating and examining public records in conjunction with receiving and fulfilling a granted written request.

b. The City shall not charge more than the hourly wage of its 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.

c. These labor costs shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.

2. Separating and Deleting Exempt from Non-Exempt:

a. For services performed by an employee of the City, the City shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from non-exempt information in the particular instance, regardless of whether that person is available or who actually performs the labor. All references in these Procedures and Guidelines to separating and deleting exempt information from non-exempt information shall refer to the separation and deletion requirements set forth in Section 14 of the FOIA, MCL 15.244.

b. If the City does not employ a person capable of separating and deleting exempt information from non-exempt information in the particular instance, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from non-exempt information in the same manner as employee labor costs when calculating charges under this subdivision if all of the following occur:

1) The City's FOIA Coordinator determines on a case-by-case basis that the City does not employ a person capable of separating and deleting exempt information from non-exempt information.

2) The City clearly notes the name of the contracted person or firm on the Detailed Itemization.

3) Total labor costs calculated for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate.

c. These labor costs shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.

d. The City shall not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the City's possession.

e. If the City directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from this labor charge.

3. Duplication or Publication Labor Charges.

a. The City may charge labor costs for duplication and publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor.

b. The City shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.

c. Labor costs shall be estimated and charged in increments of one (1) minute or more, with all partial time increments rounded down.

4. Fringe Benefit Costs. The City may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the Detailed Itemization. Subject to the 50% limitation, the City shall not charge more than the

actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits.

If all or a portion of the requested records are available on the website and the City has included the website address in its written response but the requestor wants the public records in a paper format or other nonpaper physical media, the City shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual costs of providing the information in the specified format.

5. Overtime Wages. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the Detailed Itemization.

6. Itemization. All labor fee components shall be itemized using both the hourly wage and the number of hours charged on the Detailed Itemization.

7. Unreasonably High Costs. The labor fee shall not be charged for (1) searching for, locating and examining of public records, or (2) the cost of the deletion and separation of exempt information from non-exempt 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 these unreasonably high costs. The FOIA Coordinator has authority to determine when the costs are unreasonably high in a particular instance, including, but not limited to, instances when the costs would be excessive and beyond the normal or usual amounts for responding to a request. In doing so, the FOIA Coordinator may take into account considerations such as the volume and complexity of the FOIA request as well as the City's particular fiscal condition at the time of the request or any other conditions authorized by law.

B. *Other Costs.*

1. Nonpaper Physical Media. Costs for providing records on nonpaper physical media.

a. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. The City is not required to provide the documents on nonpaper physical media if it lacks the technological capability necessary to provide records on the requested particular nonpaper physical media.

b. For public records provided to the requestor on nonpaper physical media, the City may charge the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar

media. The City may use (but is not required to) a computer disc, thumb drive or other nonphysical media provided by the requestor but only if it is provided in its original packaging. Because the safety and security of the City's computers and network is of important public interest, the City may take that security interest into account when determining the means of providing the documents on nonpaper physical media.

2. Costs for Providing Paper Copies.

a. For paper copies of public records provided to the requestor, the City may charge the actual total incremental cost of necessary duplication or publication, not including labor.

b. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided.

c. 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. For all other paper sizes, the City may charge the actual total incremental cost of duplication or publication, not including labor.

d. 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.

3. Mailing Costs.

a. The City shall charge the actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner.

b. The City shall 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.

C. *Statutory Fees.* The fees set forth in this Section V do not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

D. *Fees Paid Before Providing Documents.* The City shall require that all fees be paid in full before providing records in response to granted or granted in part written requests.

VI. DEPOSIT.

A. *Deposit.* In either the City's initial response or subsequent response as described under Section 5(2)(d), the City may require a good-faith deposit before providing the public records to the requestor if the entire fee estimate or charge authorized the FOIA exceeds \$50.00, based on a good-faith calculation of the total. The deposit shall not exceed 1/2 of the total estimated fee, and the City's request for a deposit shall be included in the Detailed Itemization. The response shall also contain a best efforts estimate by the City regarding the time frame it will take the City to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the City, but the City shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy and the nature of the request in the particular instance. If the City does not respond in a timely manner as required by the FOIA, it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve the City from any of the other requirements of this act.

B. *Increased Deposit For Prior Unpaid Requests.* After the City has granted and fulfilled a written request from an individual under this act, if the City has not been paid in full the total amount for the copies of public records that the City made available to the individual as a result of that written request, the City may require a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

1. The final fee for the prior written request was not more than 105% of the estimated fee.
2. The public records made available contained the information being sought in the prior written request and are still in the City's possession.
3. The public records were made available to the individual, subject to payment, within the time frame estimate described Section 4(7) of the FOIA.
4. Ninety days have passed since the City notified the individual in writing that the public records were available for pick up or mailing.
5. The individual is unable to show proof of prior payment to the City.
6. The City calculates a Detailed Itemization that is the basis for the current written request's increased estimated fee deposit.

The City shall no longer require an increased estimated fee deposit from an individual described above if any of the following apply:

1. The individual is able to show proof of prior payment in full to the City;

2. The City is subsequently paid in full for the applicable prior written request; or

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

C. *Payment of Deposit; Abandonment of Request.* If a deposit that is required under Subsection 4(8) or 4(11) of the FOIA (as described in Subsections VI.A and B above) is not received by the City within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. This notice of a deposit requirement is considered received 3 days after it is sent, regardless of the means of transmission. Notice of a deposit requirement will include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

VII. WAIVER OR REDUCTION OF FEES.

A. *Waiver of Fees of First \$20.00.* A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either of the following:

1. Indigency. An individual who is entitled to information under this act and who submits 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.

a. If the requestor is eligible for a requested discount, the City shall fully note the discount on the Detailed Itemization.

b. If a requestor is ineligible for the discount, the City shall inform the requestor specifically of the reason for ineligibility in the City's written response. An individual is ineligible for this fee reduction if any of the following apply:

1) The individual has previously received discounted copies of public records from the same City twice during that calendar year.

2) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request, as verified by an affidavit executed by the requestor.

2. Certain Non-Profit Organizations. A non-profit 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 meets all of the following requirements:

- a. Is made directly on behalf of the organization or its clients.
- b. 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.
- c. Is accompanied by documentation of its designation by the state, if requested by the City.

B. *Public Interest Reduction or Waiver.* The FOIA Coordinator may reduce or waive the imposition of fees if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

C. *Reduction for Late Responses.* If the City does not respond to a written request in a timely manner as required by the FOIA, the City shall do the following:

1. Reduce the charges for labor costs by 5% for each day the City exceeds the time permitted, with a maximum 50% reduction, if either of the following applies:
 - a. The late response was willful and intentional.
 - b. The written request:
 - (i) included language that conveyed a request for information within the first 250 words of the body of a letter, electronic mail, or electronic mail attachment, or
 - (ii) specifically included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy”, or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, or letter.
2. If a charge reduction is required, the City shall fully note the charge reduction on the Detailed Itemization.

VIII. INSPECTION.

Upon request, the City must furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and must furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. Pursuant to Section 4(1) of the FOIA, the City may charge a fee for the public record search, for the necessary copying of a public record for inspection or for providing a copy of the public record after inspection.

The FOIA permits the City to make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. The City must protect public records from loss, unauthorized alteration, mutilation, or destruction. As such, the City authorizes the FOIA Coordinator to determine whether in a particular circumstance an employee or agent of the City must be present at any inspection of documents to protect the public records, and in such cases may assess charges as appropriate under law.

IX. CERTIFIED COPIES.

The City must, upon written request, furnish a requesting person a certified copy of the public record disclosed in whole or in part by the City.

X. APPEALS.

A. Appeal of a Final Determination to Deny All or a Portion of the Request.

1. Submit an Appeal. If a requestor desires to appeal all or part of a final determination to deny a request, the requestor must submit to the City Council of the City of Montrose ("City Council") a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
2. Receipt of Appeal. The City Council is not considered to have received a written appeal until the first regularly scheduled meeting of the City Council following submission of the written appeal.
3. Response to Appeal. Within 10 business days after receiving a written appeal, the City Council shall do 1 of the following:
 - a. Reverse the disclosure denial.
 - b. Issue a written notice to the requesting person upholding the disclosure denial.
 - c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

d. Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the City Council shall respond to the written appeal. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

B. *Appeals of Fees (Including Deposits).*

1. Submit an Appeal. If the City requires a fee that exceeds the amount permitted under these Procedures and Guidelines or Section 4 of the FOIA, the requesting person may submit to the City Council a written appeal for a fee reduction that specifically states the word “appeal” and identifies how the required fee exceeds the amount permitted under these Procedures and Guidelines or Section 4 of the FOIA.

2. Receipt of Appeal. The City Council is not considered to have received a written appeal under until the first regularly scheduled meeting of the City Council following submission of the written appeal.

3. Response of Appeal. Within 10 business days after receiving a written appeal, the City Council 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 Section 4 of the FOIA that supports the remaining fee. The determination shall include a certification from the City Council 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.

c. Uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee. The determination shall include a certification from the City Council that the statements in the determination are accurate and that the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA.

d. Issue a notice extending for not more than 10 business days the period during which the City Council must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

XI. CIVIL ACTION.

A. *Civil Action for Non-Disclosure or Denial of Public Records.*

1. Civil Action After Appeal: If the City Council fails to respond to a written appeal or if the City Council 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 within 180 days after the City's final determination to deny a request.
2. Civil Action Directly After Denial. A requestor may also commence a civil action in the circuit court to compel the City's disclosure of the public records within 180 days after the City's final determination to deny a request. The requestor is not required to appeal the denial to the City Council before commencing the civil action.
3. Remedies; Fines. If the court determines a public record is not exempt from disclosure, it shall order the City to cease withholding or to produce all or a portion of a public record wrongfully withheld. If the person prevails, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or City 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 City 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 City to pay a civil fine of \$1,000.00 and shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00.

B. *Civil Action Regarding Fees.*

1. Civil Action After Appeal. A requestor may commence a civil action in the circuit court for a fee reduction if the City (1) failed to respond to a written appeal or (2) made a determination on a written appeal. A requester must submit an appeal to the City Council for a fee reduction before commencing a civil action. If a civil action is commenced against the City, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. This action must be filed within 45 days after receiving notice of the determination of an appeal to the City Council.
2. Remedies; Fines. If the requesting person prevails 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. If the court determines the City has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the City 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.

XII. FOIA RECORD RETENTION.

The FOIA Coordinator must keep a copy of all written requests and documents sent in response to the request for public records on file for no less than 1 year, unless a longer retention time has been specified in a record retention policy applicable to the City.

XIII. PUBLICATION AND NOTIFICATION OF PROCEDURE AND GUIDELINES.

Because the City maintains a website, these Procedures and Guidelines and the summary shall be posted and maintained on the website. The City shall make these Procedures and Guidelines and summary publicly available by providing free copies both in the response to a written request and upon request by visitors at the City's office. However, the City may include the website link instead of providing paper copies in its response to a written request.

XIV. SEVERABILITY; ENFORCEABILITY.

If any clause, provision or section of these Procedures and Guidelines shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections. If any of the Procedures and Guidelines is determined by the FOIA Coordinator to be in conflict with the FOIA or other law after adoption, the FOIA Coordinator has the authority to process FOIA requests in conformance with the FOIA and shall seek to amend these Procedures and Guidelines as soon as possible.

XV. EFFECTIVE DATE.

These Procedures and Guidelines shall become effective upon approval.

Exhibit B

FOIA – Written Public Summary

CITY OF MONTROSE

WRITTEN PUBLIC SUMMARY OF THE FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

The City of Montrose (the “City”) adopts this written public summary pursuant to the requirements of Section 4(4) of the Michigan Freedom of Information Act, 1976 PA 442 (“FOIA”) so that the public will understand the City’s Procedures and Guidelines for processing FOIA requests. This is a summary of the Procedures and Guidelines. A complete copy of the Procedures and Guidelines is available at the City Hall located at 139 S. Saginaw Street, Montrose, MI 48457 or on the website at www.cityofmontrose.us.

A. How Can I Request a Public Record?

- A person (except those persons incarcerated in state, county or federal correctional facilities), may request public records.
- The requestor must send a written request for the public record to the City. A request can be made through a letter, in person, or sent by electronic transmission. The requests should be directed to the FOIA Coordinator. The contact information is as follows: Montrose City Hall, 139 S. Saginaw Street, Montrose, MI 48457; electronic mail: clerk@cityofmontrose.us.
- A request from a person must include (unless the request is from an individual who qualifies as indigent) the person’s complete name, address (in compliance with United State Postal Service standards), and contact information, and if made by a person other than an individual, the complete name, address, and contact information of the person’s agent who is an individual. Contact information must include a valid telephone number or electronic mail address.
- The requestor will not be required to use a specific form or format, but requests must identify the public record sufficiently to allow the City to find the requested record.
- The City may, but is not required to, respond to a verbal request. However, if the City believes the information is available on its website, the City will inform the requestor of the website location where practicable and to the best of his or her knowledge.

B. When Can I Expect a Response?

- Unless otherwise agreed to in writing, the City will respond or seek a deposit within 5 business days after it receives the request. However, the City may extend that time period by 10 business days.
- Please keep in mind that a request sent by e-mail or other electronic means is not considered received until 1 business day after it is transmitted. If the request is sent to a spam or junk mail folder, it is not considered received until 1 day after it is discovered.

C. How Can I Understand the Response?

- If the City grants a written request in full, the requestor will receive a notice indicating that it has been granted.
- However, if the request is denied or denied in part, the City shall provide any or all of the following information, depending upon the reason for the denial:
 - An explanation of the basis that the public record, or portion of that public record, is exempt from disclosure, including a description of the information that is separated or deleted.
 - A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the City.
 - A full explanation of the requesting person's right to (1) submit to the City Council a written appeal; or (2) seek judicial review of the denial under Section 10 of the FOIA. (See below for more details).
 - Notice of the right to receive attorneys' fees and damages if a court determines that the City has not complied and orders disclosure of all or a portion of a public record.
- If a request is granted in part or granted in full, the City will require payment before providing documents.

D. What if I Request Documents Available on the Website?

- If documents are available on the website, to the degree practicable, the response will include a specific webpage address where the requested information is available.
- The City will inform the requestor of the additional charge to receive copies of the public records that are available on its website.

E. What Fees Will the City Charge?

- The FOIA Coordinator will provide a detailed itemization of costs.
- For labor costs, the fee shall not exceed the sum of the following components:
 - Hourly Wage. The City will not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records; separating and deleting exempt information from non-exempt information; and for duplication and publication regardless of whether that person is available or who actually performs the labor, except if the City does not employ a person capable of separating and deleting exempt information from non-exempt information, it may treat necessary contracted labor costs for that purpose in the same manner as employee labor costs but may not exceed 6 times the State minimum hourly wage.

- Time Increments: The fee will be charged in 15-minute increments, with all partial time rounded down, except the labor fee for duplication and publication, which shall be charged in one (1) minute increments.
 - Determination of Unreasonably High Labor Costs. The fee for searching for, locating and examining public records and separating exempt information from non-exempt information (including redacting) will not be charged, 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 these unreasonably high costs.
 - Overtime. Overtime wages shall not be included unless agreed to by the requestor.
 - Description of Charge. The detailed itemization will include both the hourly wage and the number of hours charged.
 - Fringe Benefit Costs. The City may also add up to 50% to the applicable labor charge amount (but may not exceed actual costs) to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits, unless a requestor wants records that are available on the website. In which case, the fringe benefit multiplier can be greater than the 50% limitation.
- For public records provided to the requestor on nonpaper physical media (discs, flash drives, e-mails), the City may charge the actual and most reasonably economical cost of the media.
 - For paper copies, the City may charge the actual total incremental cost of necessary duplication or publication not to exceed \$.10 per page (single or double sided) for 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. The City will charge the actual cost of copies made on paper of a different size. The City will use double-sided printing, if cost saving and available.
 - The City may charge the actual cost of mailing and the least expensive form of postal delivery confirmation.

F. Will a Deposit be Required?

- The City may require a good-faith deposit of ½ of the estimated fee if the entire fee estimate or charge authorized under the FOIA exceeds \$50.00, based on a good-faith calculation of the total estimated fee.
- The City will also provide a best efforts, nonbinding estimate of the time frame it will take the City to provide the public records to the requestor.
- If the City has granted a prior request but has not been paid in full, the City may require a deposit of up to 100% of the estimated fee if all of the following apply:

- The final fee for the prior written request was not more than 105% of the estimated fee.
- The public records made available contained the information being sought in the prior written request and are still in the City's possession.
- The public records were made available to the individual, subject to payment, within the time frame estimate described Section 4(7) of the FOIA.
- Ninety days have passed since the City notified the individual in writing that the public records were available for pick up or mailing.
- The individual is unable to show proof of prior payment to the City.
- The City calculates a Detailed Itemization that is the basis for the current written request's increased estimated fee deposit.

The City shall no longer require an increased estimated fee deposit 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.
- If a deposit is not received within 45 days from receipt of the deposit notice letter (it is considered received 3 days after it is sent), and no appeal of the deposit amount is filed, the request is abandoned. The notice of a deposit will include the date by which the deposit must be received (48 days after notice is sent).

G. Am I Entitled to a Wavier or Reduction of Fees?

- A reduction of the fee by \$20.00 is available to certain individuals who submit an affidavit stating they are indigent and receiving public assistance, or if not receiving public assistance, stating facts showing inability to pay because of indigency. For this reduction to apply, the individual may not have received discounted fees twice during that calendar year and the person may not be requesting on behalf of parties who are paying to make the request.
- A reduction of the fee by \$20.00 is also available to certain non-profit organizations formally carrying out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, and the protection and advocacy for individuals with mental illness act, provided that the request is made on behalf of the organization or its clients, is made for a reason consistent with the laws under Section 931 of the mental health code and is accompanied by documentation of its designation by the state.
- The FOIA Coordinator may reduce or waive the imposition of fees if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.
- If the City does not respond to a written request in a timely manner as required by the FOIA, the City shall reduce the charges for labor costs by 5% for each day the City exceeds the time permitted, with a maximum 50% reduction, if the late response was

willful and intentional or the written request included specific language as set forth more fully in the Procedures and Guidelines.

H. How Can I Appeal a Decision to Deny All or Part of My Request?

- If a requestor desires to appeal all or part of a decision to deny a request, the requestor must submit to the Whitefish City Board (“City Board”) a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the denial.
- The City Board is not considered to have received a written appeal until the first regularly scheduled meeting after submission of the written appeal.
- The City will respond within 10 business days by reversing the disclosure denial, upholding the denial, revising in part and upholding in part the denial or issuing a 10 business day extension.

I. How Can I Appeal a Determination of the Fee or Deposit Amount?

- The requestor may submit to the City Board a written appeal for a fee reduction that specifically states the word “appeal” and identifies how the required fee exceeds the amount permitted under the Procedures and Guidelines or Section 4 of the FOIA.
- The City Board is not considered to have received a written appeal until the first regularly scheduled meeting after submission of the written appeal.
- The City will respond within 10 business days by waiving the fee, reducing the fee and explaining the basis for the remaining fee, upholding the fee or issuing a 10 business day extension.

J. Can I File a Lawsuit Regarding the Denial of a FOIA Request?

- If the City Board fails to respond to a written appeal or if the City Board upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requestor may seek judicial review of the nondisclosure by commencing a civil action within 180 days after the City’s final determination to deny a request. A requestor may also commence a civil action in the circuit court to compel the City’s disclosure of the public records within 180 days after the City’s final determination to deny a request. The requestor is not required to appeal the denial to the City Board before commencing the civil action.
- If a person prevails in an action regarding the denial of a request, the court shall award reasonable attorneys’ fees, costs and disbursements. If the person prevails in part, the court may award all or a portion of the attorneys’ fees, costs and disbursements. If the court determines the FOIA was arbitrarily or capriciously violated, the court shall order a civil fine of \$1,000.00 to be paid to the state treasury. The court may also award actual, compensatory or punitive damages.

K. Can I File a Lawsuit Regarding the Fee Charged For a FOIA Request?

- A requestor may commence a civil action in the circuit court for a fee reduction if the City (1) failed to respond to a written appeal or (2) issued a determination of a written appeal. This action must be filed within 45 days after receiving notice of the

determination of an appeal to the City Council. The requester must file an appeal for a fee reduction before commencing a circuit court action.

- If a person prevails in an action by receiving a reduction of 50% or more of the total fee, the court may award all or a portion of the reasonable attorneys' fees. If the court determines FOIA was arbitrarily or capriciously violated, the court shall order a civil fine of \$500.00 to be paid to the state treasury. The court may also award actual, compensatory or punitive damages.

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Exhibit C

FOIA – Detailed Itemization Sheet

CITY OF MONTROSE DETAILED ITEMIZATION

LABOR CHARGES	
<p>A. Cost for Searching for, Locating and Examining of Public Records</p> <p>1. <i>Determination of Hourly wage:</i></p> <p style="margin-left: 20px;">\$ _____</p> <p style="margin-left: 20px;">\$ _____ (Employee 2 ("E2"), if applicable)</p> <p style="margin-left: 20px;">\$ _____ (Employee 3 ("E3"), if applicable)</p> <p style="margin-left: 40px;"><input type="checkbox"/> Hourly wage includes a fringe benefit percentage multiplier of _____%</p> <p>2. <i>Determination of total time using increments of 15 minutes with partial time rounded down:</i> _____ hours; E2 _____; E3 _____.</p> <p>The FOIA Coordinator has determined that failure to charge this fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance because of the following reasons:</p> <p>_____</p> <p>_____</p>	<p>Hourly wage:</p> <p>\$ _____</p> <p>\$ _____ (E2)</p> <p>\$ _____ (E3)</p> <p>Total time:</p> <p>_____ hours</p> <p>_____ hours (E2)</p> <p>_____ hours (E3)</p> <p>A. Total Fee (hourly wage x total time):</p> <p>\$ _____</p>
<p>B. Cost for Separating Exempt Information, including Redaction of Documents.</p> <p>1. <i>For employees, determination of the Hourly wage:</i></p> <p style="margin-left: 20px;">\$ _____</p> <p style="margin-left: 20px;">\$ _____ (Employee 2 ("E2"), if applicable)</p> <p style="margin-left: 20px;">\$ _____ (Employee 3 ("E3"), if applicable)</p> <p style="margin-left: 40px;"><input type="checkbox"/> Hourly wage includes a fringe benefit percentage multiplier of _____%</p> <p>2. <i>Determination of total time using increments of 15 minutes with partial time rounded down.</i> _____ hours; E2 _____; E3 _____.</p> <p>The FOIA Coordinator has determined that failure to charge this fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance because of the following reasons:</p> <p>_____</p> <p>_____</p> <p>2. <i>For Contracted Labor Costs:</i></p> <p><input type="checkbox"/> The FOIA Coordinator has determined that the City does not employ a person capable of deleting exempt information from non-exempt information in the particular instance and the work is being performed by the following person or firm:</p> <p>_____</p>	<p>Hourly wage:</p> <p>\$ _____</p> <p>\$ _____ (E2)</p> <p>\$ _____ (E3)</p> <p>Total time:</p> <p>_____ hours</p> <p>_____ hours (E2)</p> <p>_____ hours (E3)</p> <p>B1. Total Fee (hourly wage x total time):</p> <p>\$ _____</p>

<p>a. Determination of the Hourly wage:</p> <p>The hourly wage of the contracted labor (not to exceed 6 times the State of Michigan minimum hourly wage): \$_____</p> <p>b. Determination of total time using increments of 15 minutes with partial time rounded down. _____ hours.</p> <p><input type="checkbox"/> The FOIA Coordinator has determined that failure to charge this fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance because of the following reasons:</p> <p>_____</p> <p>_____</p>	<p>Contracted labor hourly wage: \$_____</p> <p>Contracted labor hours: _____ hours</p> <p>B.2 Total Fee for contracted labor (hourly wage x hours): \$_____</p>
<p>C. Cost for Duplication and Publication.</p> <p>1. Determination of the Hourly wage: \$_____</p> <p><input type="checkbox"/> Hourly wage includes a fringe benefit percentage multiplier of _____%</p> <p>2. Determination of total time using increments of one (1) minute with partial time rounded down. _____ hours.</p>	<p>Hourly wage: \$_____</p> <p>Total time: _____ hours</p> <p>C. Total Fee (hourly wage x hours) \$_____</p>
<p>Other Actual Costs</p>	
<p>D. Costs for Paper Copies.</p> <p>The actual total incremental cost of necessary duplication and publication using the most economical means available:</p> <p>1. Not to exceed \$.10 per sheet for 8 ½ by 11 or 8 ½ by 14 in paper: \$_____ per sheet x _____ number of sheets = \$_____.</p> <p>2. Other paper sizes: \$_____ per sheet x _____ number of sheets = \$_____.</p>	<p>D. Total Fee (add totals for all sizes of paper): \$_____</p>
<p>E. Costs for Nonpaper Physical Media.</p> <p>The actual and most reasonably economical cost of the computer disc, flash drives, computer tape or other similar media: \$_____ per item x _____ number of items .</p>	<p>E. Total Fee: \$_____</p>
<p>F. Cost of Mailing:</p> <p>1. The actual cost of mailing: \$_____</p> <p>2. Fee for the least expensive postal delivery confirmation: \$_____</p> <p>3. Costs for the envelope or box for mailing \$_____.</p> <p><input type="checkbox"/> The requestor has stipulated to expedited shipping and/or insurance and those costs are listed above as the actual costs of mailing.</p>	<p>F. Total Fee: (add all 3 costs): \$_____</p>
<p>Total Fee (If No Deposit) Fee paid on: _____</p>	

Deposit Required	
<input type="checkbox"/> The City requires a deposit of \$_____ (1/2 of the estimated fee) and this total estimated fee exceeds \$50.00. <input type="checkbox"/> The City requires a deposit of \$_____ (100% of the estimated fee) because this request meets the statutory requirements for failing to pay for prior requests under Section 4(11) of the FOIA. The deposit must be received on or before _____. If the deposit is not received by this date, the request will be considered abandoned.	Deposit Amount: \$_____ Deposit Paid on _____
Total Fee \$_____ - Deposit Amount \$_____ = Remaining Fee Due of \$_____ Fee Paid on _____	Total Fee Due: \$_____

Costs for Providing Documents Available on the Website	
The City has notified the requestor in its written response that all or a portion of the requested information is available on its website. The City has determined that the detailed itemization of the cost of the information that is available on the website is \$_____.	Total Fee: _____

Reductions for Late Response	
Reduction for Late Response: If the City does not respond to a written request in a timely manner, the City shall reduce the charges for labor costs by 5% for each day the City exceeds the time permitted, with a maximum 50% reduction. _____ days x 5% of labor costs = \$_____	Subtract \$_____ of labor charges (up to 50% of labor costs).