

**MICHIGAN STRATEGIC FUND
FREEDOM OF INFORMATION ACT
POLICIES AND PROCEDURES**

Policy

It is the public policy of the State of Michigan and the Michigan Strategic Fund (MSF) that all persons, except those persons incarcerated in a state or local correctional facility, 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 Freedom of Information Act (FOIA). Citizens shall be informed so that they may fully participate in the democratic process. The Michigan Economic Development Corporation (MEDC) provides administrative services to the MSF and processes FOIA requests on its behalf.

General Information

- “Public record” is defined by the FOIA as “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software.” The FOIA separates public records into two classes: Those that are exempt from public disclosure under section 13(1) of the act; and those that are not exempt from public disclosure under section 13(1), and are subject to disclosure under the act.
- “Writing” is defined by the FOIA as “handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.” MSF regards e-mail to be a means of recording or retaining meaningful content.
- “Written request” is defined by the FOIA as “a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.”
- “FOIA coordinator” is defined by the FOIA as an individual designated by a public body to accept and process requests for public records under the act. The FOIA Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

Requirements

- All MEDC and MSF employees must work through the assigned FOIA Coordinator in responding to such requests to ensure that consistent and correct responses are provided to the public.

- Any request for information may be considered a FOIA request and within the request, includes words such as “freedom of information”, “information”, “FOIA”, “copy”, or a recognizable misspelling of such within the first 250 words of the request.
- All FOIA requests must be received in writing and submitted to the attention of the FOIA Coordinator by mail at 300 North Washington Square, Lansing, MI 48913 or by email to medcfoia@michigan.org or by fax at (517) 241-5968

Procedures

1. A person desiring to inspect or receive a copy of a public record must make a written request for the public record. The request must describe the record sufficiently to enable the FOIA Coordinator to find the public record. A written request may be made by U.S. Postal Service, facsimile, electronic mail, or other electronic transmission. Requesters must provide their name, address and date of request so that the MSF can document that a request has been made and properly processed and assist the MSF in determining excessive requests for the same information.
2. A request for a public record received by any MEDC or MSF employee is immediately delivered to the FOIA Coordinator. Upon receipt of a FOIA request, the FOIA Coordinator contacts the business units that might possess records responsive to the request and provides instructions and deadlines for identifying and compiling responsive records. Records in MSF files from other agencies, public or private, generally constitute public records of the MSF subject to the FOIA. Likewise, MSF records possessed by other public agencies might be subject to disclosure pursuant to FOIA requests made to those agencies.
3. Upon receipt of a FOIA request, the FOIA Coordinator will e-mail MEDC and MSF employees who may possess records responsive to the FOIA request. The FOIA Coordinator will include instructions and deadlines for identifying, compiling and submitting responsive records. To ensure that the statutory time limits are met, the MEDC or MSF employee shall provide the FOIA Coordinator all responsive records by the deadline set by the FOIA Coordinator.
4. The FOIA Coordinator must issue a written notice in response to a FOIA request within five (5) business days after receiving the request. The written notice issued in response may be extended for up to an additional ten (10) business days. The notice extending the period for a response to the request will specify the reasons for the extension and the date by which the FOIA Coordinator will issue the second written notice.
5. Subject to Section 4 of the FOIA, the FOIA Coordinator will determine the fees for search, examination, review and the deletion and separation of exempt from nonexempt information; and the costs of copying and mailing. The FOIA Coordinator will work with staff to determine the fees that may be charged. At the

time that a FOIA request is made, the FOIA Coordinator may request a good faith deposit not to exceed one-half of the total fees and costs from the person requesting the public record(s), if the total fees and costs exceed \$50.00. Upon payment of the good faith deposit, the FOIA Coordinator will e-mail employees with instructions for compiling the responsive records. Employees must provide the public records to the FOIA Coordinator on or before the deadline set by the FOIA Coordinator.

- a. Individuals who submit an affidavit stating that they are receiving public assistance or showing inability to pay costs because of indigency shall not be charged for the first \$20.00 of the fee for each request. Persons representing public interest groups may have the entire fee waived. All fee waiver determinations will be made by the MSF President.
 - b. Pursuant to Section 10a of the FOIA, the requester who has a good faith belief that a fee for public records is unreasonable may (a) submit a written appeal to the MSF President that specifically states the word "appeal" and identifies how the fee exceeds the amount permitted by the policies and procedures of Section 4 of the FOIA, or (b) bring a court action within 45 days after receiving the notice of the required fee. If a civil action is commenced against the MSF, the MSF is not obligated to complete the processing of a written request for the public record at issue until the court resolves the fee dispute.
6. The FOIA Coordinator is responsible for determining whether a FOIA request is denied in full or in part, and shall sign the written notice of denial. By way of example, and not limitation, the FOIA Coordinator may deny all or a portion of a request for the following reasons: (a) the information is of personal nature, where the public disclosure would constitute a clearly unwarranted invasion of an individual's privacy; (b) information or records are subject to the attorney-client privilege; or (c) communication within a public body or between public bodies of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to a final agency action or policy and that the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
7. When a requesting person elects to inspect public records, the FOIA Coordinator will determine what constitutes a reasonable opportunity for inspection and examination of existing, nonexempt public records and will furnish reasonable facilities for inspection during usual business hours. The FOIA Coordinator will protect public records from loss, unauthorized alteration, mutilation, or destruction. Where original public records are involved in the inspection, the employee shall supervise the inspection of the original public records. Requestors who inspect public records onsite shall: (1) be provided designated space including a table and chair; (2) review the documents in the presence of the FOIA Coordinator; (3) not be allowed to remove documents from files or from

the premises unless those documents are copied specifically for the requester by the FOIA Coordinator; and (4) the MSF may charge a reasonable fee for an employee assisting and overseeing the process of the requester's record search, necessary copying and examination of the public records.

8. If the FOIA Coordinator makes a final determination to deny all or a portion of a request, the requesting person has the option to submit a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial; or, within 180 days after the FOIA Coordinator's final determination to deny a request, commence an action in the Court of Claims to compel the MSF's disclosure of the public records.
9. The MSF President is responsible for responding to written appeals of the FOIA Coordinator's determinations to deny requests for disclosure under FOIA. Within ten (10) business days after receiving a written appeal, the MSF President must do one of the following:
 - a. Reverse the denial;
 - b. Issue a written notice upholding the denial
 - c. Reverse the denial in part and issue a written notice upholding the denial in part;
 - d. Under unusual circumstances, issue a written notice extending the period in which the MSF must respond to the written appeal by up to ten (10) additional business days.

Record Retention

All written FOIA requests and responses for public records shall be kept on file no less than one (1) year.

Subscriptions

A requester has the right to subscribe to future issuance of public records which are created, issued or disseminated on a regular basis, i.e., monthly meeting minutes, news periodicals and regularly produced documents that provide status updates. A subscription is valid up to six (6) months, at the request of the subscriber, and is renewable.

- a. Subscription requests shall be processed following normal procedures for processing FOIA requests.
- b. Requesters shall be placed on a mailing list, to receive regular updates of materials relative to the respective FOIA request. Non-exempt information will be released, as it becomes available.

Fee Schedule

The MSF is permitted to charge a fee for public record(s) search, retrieval, examination, review and separation and deletion of exempt from nonexempt material, copying of public record(s) for inspection, or for providing a copy of the public record(s). Fees will be uniform and not dependent upon the identity of the requesting person. Fees will be itemized using a detailed itemization form. The fee schedule may be updated from time to time.

Labor Fees

- Labor costs for the search, location, and examination of public records will be calculated using the hourly wage of the lowest paid employee capable of conducting the search, location, and examination, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits. In the event the MEDC performs an email search, the search will be calculated using the lowest paid employee capable of conducting the search.
- Labor costs for the review of public records and separation and deletion of exempt from nonexempt material will be calculated using the hourly wage of the Fund's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
- Labor costs for the duplication or publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on nonpaper physical media or through electronic means, will be calculated using the hourly wage of the lowest paid employee capable of duplicating or publishing the public records, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of 15 minutes with all partial increments rounded down. The hourly wage will be based on records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
- Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the lowest paid employee capable of monitoring the inspection.

Labor costs for monitoring an inspection will not be charged for the first hour. The hourly wage will be based on payroll records for the applicable fiscal year.

- A fee shall not be charged for the cost of search, examination, review and the deletion and separation of exempt from non-exempt information as provided in Section 4(3), unless failure to charge a fee would result in unreasonably high costs to the MSF, because of the nature of the request in this particular instance, and the MSF identifies the nature of the unreasonably high costs.
- The cost of labor and other labor-related costs will be charged for the search, examination, review, deletion and the separation of exempt from non-exempt information when a request requires more than a total of one (1) hour of an employee's time in filling such a request.

Additional Fees

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| <p>1. Photocopying performed by an MEDC or MSF employee – shall be at a per page (MSF will utilize the most economical means available for making copies including double-sided printing, if cost saving is available) rate, plus labor costs for employee's time at copier.</p> | <p>\$.10 per page</p> |
| <p>2. Facsimile performed by an MEDC or MSF employee – shall be at a per page rate, plus labor costs for employee's time at the fax machine.</p> | <p>\$2.00 per page</p> |
| <p>3. Photocopying and/or Facsimile performed by an outside copy service including large documents.</p> | <p>\$ Actual Costs</p> |
| <p>4. Electronic Copies – Actual retrieval and printing time based upon the labor rates established above plus the per electronic rate for CD-ROM or any other electronic medium used to provide the information. Machine time may only be charged if the costs of the services of a particular computer are paid by the MSF based on an incremental charge to the MSF for additional computer usage.</p> | <p>\$10.00 per electronic medium plus actual staff time to reproduce records</p> |
| <p>5. Mailing or Shipping – Actual costs, insurance or other charges related to the mailing and shipping of responsive records to the requesting person. Costs will be based on current U.S. Postal rates for the actual size and weight of the materials sent.</p> | <p>\$Actual Costs</p> |

Transparency Liaison

A Transparency Liaison is available to assist members of the public seeking a public record from the MEDC in navigating the requirements of the Freedom of Information Act or other law applicable to public records.

Reference

P.A. 442 of 1976, MCL 15.231 et seq.

Executive Directive 2019-11

Contact Information

Any questions or concerns regarding this policy should be directed to the FOIA Coordinator.

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