

**CITY OF GALESBURG
FOIA PROCEDURES AND GUIDELINES**

**SECTION 1
PREAMBLE – STATEMENT OF PRINCIPLES**

The State of Michigan enacted the Freedom of Information Act ("FOIA"), most recently amended effective July 1, 2015, to provide public access to certain public records of public bodies, to permit certain fees, to prescribe the powers and duties of certain public officers and public bodies and to provide remedies and penalties. Subject to the provisions of FOIA, the City of Galesburg ("City") has a legal obligation to and will disclose all non-exempt public records in its possession pursuant to a FOIA request. Certain records are exempt in order to ensure the effective operation of government and to protect the privacy of individuals. All other documents will be available for disclosure.

The City will protect the public's interest in disclosure while balancing the requirement to withhold or redact portions of certain records.

The City Council has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body, although verbal requests are also permitted, and explaining how to understand a public body's written responses, deposit requirements, fee calculations and avenues for challenge and appeal, so that the City will comply with FOIA and assist and guide the public in obtaining non-exempt City documents.

**SECTION 2
GENERAL POLICIES**

The City Council, acting pursuant to the authority at MCL 15.236, designates the City Clerk as the FOIA Coordinator ("FOIA Coordinator"). He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City's public records and approve denials. "FOIA Coordinator", as used herein, includes his or her designees.

If a request for a public record is received by mail, e-mail or in person, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City 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 FOIA Coordinator shall note in a FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary if information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

The City will make this Procedures and Guidelines document and the Written Public Summary available without charge. If it does not, the City cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance. Free copies of both shall be provided upon written or verbal request. The City shall provide a person requesting a document either a paper copy of the FOIA Procedures and Guidelines and the City's Written Public Summary or, in lieu thereof, an interactive link to the City's website where these documents can be reviewed. The City's website address is www.galesburgcity.org.

SECTION 3 **REQUESTING A PUBLIC RECORD**

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records perspired, owned, used, possessed or retained by the City may be submitted on the City's FOIA Request Form, in any other form of writing (letter, e-mail, etc.) or by verbal request to the City Clerk.

If a person makes a request for information believed to be available on the City's website, the City may comply with the FOIA by informing the requester of the pertinent website address where the requested document may be found.

A request must sufficiently describe a public record so as to enable the City FOIA Coordinator to identify the requested public record.

Written requests for public records may be submitted in person or by mail to the City address, c/o FOIA Coordinator. Requests may also be submitted electronically by e-mail addressed to the FOIA Coordinator at the e-mail at clerk@galesburgcity.org. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, e-mailed or otherwise provided to him or her in digital form in lieu of paper copies. The City 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 City on a regular basis (examples: newsletters, approved regular monthly meeting minutes, etc.). 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 4 **PROCESSING A REQUEST**

Unless otherwise agreed to in writing by the person making the request, the City will issue a response within 5 business days of receipt of a FOIA request. If a request is received by e-mail, the request is deemed to have been received on the following business day.

The City 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 notice indicating that, due to the nature of the request, the City 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 City's website.

When a request is granted or granted in part.

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.

If the cost of processing a FOIA request is \$50 or less, the requestor 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 City will require a good-faith deposit pursuant to Section 5 of this policy 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 City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be non-binding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 2 of the FOIA.

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 certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public records 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 the City Council or seek judicial review in the Kalamazoo County Circuit Court;
- An explanation of the right to receive attorney's fees, costs and disbursements as well as actual or compensatory damages and punitive damages of \$1,000.00 should the requestor 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 and offer the requestor the opportunity to clarify 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 City 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 City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

Requests for certified copies.

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

SECTION 5 **FEE DEPOSITS**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person or entity who has not paid the City 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 City's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 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 City; 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 to the City;
- The City 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 City.

SECTION 6 **CALCULATION OF FEES**

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 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 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 City's usual FOIA requests.

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

- 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.
- Whether the public records are from more than one City department or whether various City offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may 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 City.
- 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 City.
- 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 City's website if the requestor asks for the City to make copies.
- The cost of computer disks, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if the requestor asks for the City 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 City employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor. Overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs (examples: attorney's, engineer's or other expert's fees) will be charged at the hourly rate of 6 times the State minimum hourly wage (presently \$48.90).

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.
- The City will not accept nor use requestor's media in order to ensure integrity of the City's technology infrastructure.

The cost to provide paper copies of records will be based on the following:

- Paper copies of public records made on standard letter (8½ x 11) or legal (8½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for other sized sheets of paper will reflect the actual cost of reproduction.

- The City 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:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- The City will not use expedited shipping or insurance unless specifically requested, and the requestor agrees to pay the costs of expedited shipping and/or insurance.

If the FOIA Coordinator does not respond to a written request in a timely manner as set forth in Section 4 herein, the City must:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The City'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, e-mail or e-mail 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 e-mail, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

SECTION 7 **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, if the request is in the public interest as primarily benefitting the general public. The City Council may identify specific records

or types of records it deems should be made available for no charge or at a reduced cost.

SECTION 8 **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 a Sworn Affidavit of Facts, including supporting documentation, showing that they are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, showing facts, including supporting documentation, 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 City twice during a calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An Affidavit is a Sworn Affidavit of Facts, not simply conclusions. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

Non-Profit 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 non-profit 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 9
APPEAL OF A DENIAL OF A PUBLIC RECORD

If 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 City Council by filing an appeal of the denial at the City Offices.

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. A FOIA Appeal Form (to appeal a denial of records), may be used.

The City Council is not considered to have received a written appeal until the first regularly scheduled City Council meeting following submission of the appeal. However, the City Council may, but is not required to, at its sole discretion, address the appeal at its first meeting following submission of the appeal.

No later than 10 business days after the date of the first regularly scheduled City Council meeting following submission, the City Council 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 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.

If the City Council fails to respond to a written appeal, or 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 non-disclosure by commencing a civil action in Circuit Court.

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

If a Court that 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, 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 attorney's 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 attorney's 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, 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 10

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 City to process a FOIA request exceeds the amount permitted by State law or under this policy, he or she must first appeal to the City Council by submitting a written appeal for a fee reduction to the City Council at the City offices.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The City FOIA Appeal Form (to appeal and excess fee) may be used.

The City Council is not considered to have received a written appeal until the first regularly scheduled City Council meeting following submission of the written appeal. However, the City Council may, but is not required to, at its sole discretion, address the appeal at its first meeting following submission of the appeal.

No later than 10 business days after the date of the first regularly scheduled City Council meeting following submission, the City Council 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 City Council will respond to the written appeal. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

Where the City Council reduces or upholds the fee, the determination must 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.

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

If a civil action is commenced against the City for an excess fee, 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.

An action shall not be filed in Circuit Court unless one of the following applies:

- The City does not provide for appeals of fees;
- The City Council failed to respond to a written appeal as required; or
- The City Council issued a determination to a written appeal.

If a Court determines that the City 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 attorney's fees, costs and disbursements. The award shall be assessed against the public body liable for damages.

If the Court determines that the City has arbitrarily and capriciously violated the FOIA 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. 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.

SECTION 11

CONFLICT WITH PRIOR FOIA POLICIES AND PROCEDURES; EFFECTIVE DATE

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

SECTION 12
APPENDIX OF CITY FOIA FORMS

- Request for Public Records Form.
- Notice to Extend Response Time Form.
- Notice of Denial Form.
- Detailed Cost Itemization Form.
- Appeal of Denial of Records Form.
- Appeal of Excess Fee Form.