

MACATAWA AREA EXPRESS TRANSPORTATION AUTHORITY

FREEDOM OF INFORMATION ACT (FOIA) POLICY

SECTION 1: SUMMARY OF MICHIGAN'S FREEDOM OF INFORMATION ACT

The Michigan Freedom of Information Act (Act No. 442 of the Public Acts of 1976) regulates and sets requirements for the disclosure of public records by all public bodies in the state of Michigan.

The Freedom of Information Act includes:

- an agency, board, commission, or council in the legislative branch of the state government;
- a county, city, township, village, inter county, inter city, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council or agency thereof; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

“Public record” means 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.

The Freedom of Information Act sets requirements for the disclosure of public records by all “public bodies” in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered.

Public Records Open to Disclosure:

In general, all records except those specifically cited as exceptions are covered by the Freedom of Information Act. The records covered include minutes of open meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules or policies, including, but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered.

It does not matter what form the record is in. The act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. It does not include computer software.

Public Records Exempt From Disclosure:

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the Freedom of Information Act. The following public records are exempt from disclosure under this act:

--Specific personal information about an individual if the release would constitute a clearly unwarranted invasion of that individual's privacy.

--Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

- interfere with law enforcement proceedings;
- deprive a person of the right to a fair trial or impartial administrative adjudication;
- constitute an unwarranted invasion of personal privacy;
- disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source;
- disclose law enforcement investigative techniques or procedures; or
- endanger the life or physical safety of law enforcement personnel.

--Public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

--Records which if disclosed would violate the Family Educational Rights and Privacy Act of 1974 (primarily student records).

--Records specifically exempted from disclosure by another statute.

--A public record or information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable.

--Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy.

--Information subject to attorney-client privilege.

--Information subject to other privileges such as counselor-client and those recognized by statute or court rule.

--Pending public bids to enter into contracts.

--Appraisals of real property to be acquired by a public body.

--Test questions and answers, scoring keys and other examination instruments.

--Medical, counseling or psychological facts which would reveal an individual's identity.

--Communications and notes between and within public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

--Law enforcement communication codes and employment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.

--Information which would reveal the location of archeological sites.

--Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.

--A student's college academic transcript where the student is delinquent on university loans.

--Records of any campaign committee including any committee that receives moneys from a state campaign fund. (These records are open to the public under Public Act 388 of 1976).

--Public records of a police or sheriff's agency where disclosure would identify an informer, or undercover agent, or reveal the home address, telephone number of an officer or agent, or disclose personnel records of law enforcement agencies.

--Records pertaining to an investigation of a health care professional conducted by the Department of Consumer and Industry Services pursuant to the Public Health Code before a complaint is issued.

--Records of a public body's security measures.

--Records relating to a civil action in which the requesting person and the public body are parties.

--Records that would disclose the social security number of an individual.

--Applications, including letters of recommendation and references, for president of an institution of higher learning if the records could be used to identify the candidate. However, records pertaining to persons identified as finalists, except letters of recommendation and references, are not exempt.

Availability of Public Records:

A request must be made in writing and provided to the FOIA coordinator of the public body. A request must be a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means. A FOIA coordinator may designate another individual to act on his or her behalf to accept requests for processing.

A person may ask to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request. However, prisoners in state, county or federal correctional facilities are not entitled to make requests.

Not more than five business days after receiving a request, the public body must respond to a request for a public record. The public agency can, notify the requester in writing and extend the time for an additional ten business days.

A person also has the right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.

The public body or agency has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body.

Fees for Public Records:

A government agency may charge a fee for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. A public body may also charge for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing and labor costs. The first \$20 of a fee must be waived for a person who is on welfare or presents facts showing inability to pay because of indigency.

Denial of a Record:

If a request for a record is denied, written notice of the denial must be provided to the requester within five business days, or within 15 business days if an extension is taken. A failure to respond at all constitutes a denial.

When a request is denied, the public body must provide the requester with a full explanation of the reasons for the denial and the requester's right to submit an appeal to the head of the public body or to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney fees and collect damages.

Enforcement:

A person may appeal a final decision to deny a request to the head of the public body. The head of the public body has 10 days to respond to the appeal. Under unusual circumstances, an additional 10 days may be taken. A person also has the right to commence an action in circuit court to compel disclosure of public records. The suit must be filed within 180 days after the public body's final decision to deny a request.

The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

Penalties for Violation of the Act:

If the circuit court finds that the public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of \$500 to the person seeking the right to inspect or receive a copy of a public record.

SECTION 2: RIGHT TO RECORDS

A person has the right to submit a written request for public records from the Macatawa Area Express Transportation Authority (Macatawa Area Express). If a person is disabled and is unable to make a request in writing, the FOIA Coordinator shall make special accommodations. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

A person has the right to inspect a public record, unless exempted by law or court order. Original public records are not to be released from the Macatawa Area Express offices where the public records are secured. A

person may request that copies of a public record be provided subject to the payment of fees outlined in Section 4. A person shall not receive copies of a public record unless payment is made at the time of delivery or pickup. Notwithstanding, the Macatawa Area Express shall not refuse to process a written request of a public record if payment of a prior request has not been made.

A person has the right to subscribe to future issuances of regularly published public records as outlined in Section 3 for a period of six (6) months or less, which request may be renewed.

Upon request, a person will be provided with a reasonable opportunity to examine the public records provided by the Macatawa Area Express during usual business hours. Persons with special needs should contact the FOIA Coordinator to ensure arrangements are prepared. A person has a right to obtain a certified copy of the public record.

A person has a right to appeal a decision made by the Macatawa Area Express as provided in Section 8 of this policy.

SECTION 3: RIGHTS & OBLIGATIONS OF THE MACATAWA AREA EXPRESS

The FOIA Coordinator shall provide reasonable facilities and opportunities for persons to inspect public records. To implement this section, the FOIA Coordinator may prepare and submit to the Macatawa Area Express Transportation Authority Board, for its approval, rules to regulate the time and manner in which records are reviewed, to protect the records and to prevent excessive interference with the transit system's normal operations, and to protect public records from loss, unauthorized alteration, mutilation, or destruction.

The Macatawa Area Express shall process all written requests for a public record. If a request has not been made in writing, the Macatawa Area Express shall have the person complete the request form (see FOIA request form, Attachment A). Notwithstanding, the Macatawa Area Express shall not deliver or make a public record available to the requesting person until payment is made. If the Macatawa Area Express delivers or makes a public record available and the requesting person has not made payment at the time, the Macatawa Area Express shall be entitled to collect from the requesting person the allowed cost of processing the request and any attorney fees and costs necessary for the collection if the person does not pay the cost within thirty (30) days of the public records being available or when they are sent by the Macatawa Area Express.

The FOIA Coordinator shall provide a certified copy of a public record if a person requests the same in writing.

Neither the Macatawa Area Express nor the FOIA Coordinator are obligated to create a new public record, or make a compilation, summary, or report information which does not already exist. This shall not apply to an already existing public record which must be separated under Section 6 of this policy. Neither the Macatawa Area Express nor the FOIA Coordinator is obligated to provide answers to oral or written questions. Unless a request requires that the Macatawa Area Express provide copies to the person, the Macatawa Area Express may allow for inspection of the public records.

The FOIA Coordinator shall provide copies of any public records as provided for in the FOIA and shall retain a copy of all written requests on file for a period of not less than one (1) year. The FOIA Coordinator will follow the provisions of Section 4 of this policy.

SECTION 4: PROVISIONS FOR COPYING PUBLIC RECORDS

The Macatawa Area Express shall adopt, by resolution, a schedule of fees for providing copies of public records. All FOIA requests submitted pursuant to the FOIA shall be subject to the fees and charges adopted by the Macatawa Area Express, except any fees as otherwise provided by law. Postage and handling shall also be charged as applicable and shall include the exact postage, as well as the cost for envelopes or other containers

used for mailing copies of the public records requested. The Macatawa Area Express must use the most economical means available for making copies of public records.

The FOIA Coordinator may waive a fee or reduce a fee if it is determined 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.

The FOIA Coordinator may only charge a fee for the cost involved with searching for, examining, reviewing a public record, and the deletion and separation of exempt from non-exempt information when it results in an unreasonably high cost to the Macatawa Area Express. In determining what entails an unreasonably high cost to the Macatawa Area Express, the FOIA Coordinator shall consider the following factors on a case-by-case basis:

1. Volume of public record requested;
2. Complexity of searching for, examining, reviewing a public record, and the deletion and separation of exempt from non-exempt information;
3. The need to search for, examine, and review public records from different departments, commissions, boards, or committees for the Macatawa Area Express;
4. The anticipated hours of labor;
5. The available staffing for responding to the request; and
6. Any other similar factors designated by the FOIA Coordinator.

Charges for labor costs shall be determined by using the hourly wages of the lowest paid public body employee capable of retrieving the records requested. The cost of labor includes the employee's salary, fringe benefits, and employment-related taxes.

A public record search shall be made and a copy shall be furnished without the charge for the first \$20.00 of the fee for each request to any person who submits an affidavit stating that the person is then receiving public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigence.

Where total fees and charges are reasonably anticipated to exceed \$50.00 (see FOIA Worksheet, Attachment B), the FOIA Coordinator is further authorized to require that 50% of the estimated fees and charges be paid prior to the release of the public record copies.

The FOIA Coordinator shall not charge additional fees for certification of any copies. Charges for labor costs shall be determined by using the hourly wages of the lowest paid public body employee capable of retrieving the records requested. The cost of labor includes the employee's salary, fringe benefits, and employment-related taxes.

The Macatawa Area Express has limited in-house capabilities for copying photographs, audio or video tapes, microfilms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at Macatawa Area Express rates) will also be applied to the charges of the person(s) requesting the public records.

The Macatawa Area Express may hire third parties to process or assist in the processing of a request. Copy fees and mailing charges for future issuances of regularly published public records will be arranged through the FOIA Coordinator. A person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record for a period of time, not to exceed six months, unless extended (see Request for Future Issuance, Attachment C). The FOIA Coordinator must sign the request form to confirm that the public record is one that is regularly published.

SECTION 5: PROCEDURES OF THE PUBLIC BODY IN PROCESSING A FOIA REQUEST

Unless otherwise agreed to in writing by the person making the request, the Macatawa Area Express shall respond to the request within five (5) business days after it receives the request by doing any of the following:

1. Granting the request.

If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will contact the person to arrange for inspection at a reasonable time during the usual business hours.

If the request indicates that the person wishes to have copies of a public record prepared and/or mailed and the anticipated fees and charges exceed \$50.00, the FOIA Coordinator may first mail a FOIA Worksheet to the person and request a 50% payment of the anticipated charges and fees.

Upon receiving the person's executed FOIA Worksheet, where required, along with any payment due, the FOIA Coordinator will respond by providing those public records.

2. Issuing a written notice denying the request. The notice of denial shall include:

- a. An explanation as to why the requested public record is exempt from disclosure in accordance with the FOIA, or
- b. a certificate that the requested public record does not exist under the name given by the person or another name reasonably known to the Macatawa Area Express, or
- c. an explanation or general description of information which had to be separated or deleted from the public record pursuant to Section 6 of this policy.
- d. an explanation of the person's right to appeal (which states the word "appeal") the denial to the Macatawa Area Express Transportation Authority Board and/or seek judicial review in accordance with the FOIA.
- e. an explanation of the person's right to reasonable attorney fees, costs, and disbursements as well as actual or compensatory, and punitive damages of \$500.00.
- f. the FOIA Coordinator shall sign the notice of denial.

3. Granting the request in part, and issuing a written notice denying the request in part. In the latter instance, the public records exempted from disclosure should be treated as in 2 above.

4. Issuing a written notice extending the time in which to respond to the request by ten (10) business days. Only one (1) written notice extending the response time is allowed.

A written request made by facsimile, electronic mail, or other electronic transmission is not deemed to have been received by the FOIA Coordinator until one (1) business day after the facsimile, electronic mail, or other electronic transmission is made.

If a person does not sufficiently describe a public record, the FOIA Coordinator shall notify the person that the request is deficient. The notice shall serve as a denial under Section 5 of this policy and the FOIA. The notice shall include the relevant language from Section 5. A subsequent written request is considered a new request and subject to the timelines described in this section.

SECTION 6: PROCEDURES FOR SEPARATION OF RECORDS

If a request is made for a public record that includes information which is exempt from disclosure under the FOIA and information which is not exempt, the FOIA Coordinator must separate the material and make the non-exempt material available for examination and/or copying. Additionally, the FOIA Coordinator is directed to generally describe the material which had to be separated, unless doing so would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

SECTION 7: DESIGNATION OF FOIA COORDINATOR

The Macatawa Area Express Coordinator is hereby designated to be the Macatawa Area Express FOIA Coordinator. As is necessary, other individuals on staff may assist with or carryout these responsibilities in accordance with FOIA guidelines. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records. The FOIA Coordinator will approve denials in accordance with the FOIA.

SECTION 8: APPEALS

In accordance with the FOIA, where a person's request for a public record is denied, in whole or in part, the person may file a written appeal to the decision in accordance with the following process:

1. The written appeal must specifically state the word "appeal" and identify the reason or reasons for the reversal of the denial.
2. The person shall be advised by the FOIA Coordinator of the right to file a written appeal to the Macatawa Area Express Transportation Authority Board for any requests to the Macatawa Area Express.
3. The Macatawa Area Express Transportation Authority Board, as an agenda item at its next regularly scheduled monthly board meeting, shall take one of the following actions:
 - a. Reverse the disclosure denial.
 - b. Issue a written notice to requesting person affirming the disclosure denial.
 - c. Reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.
 - d. Under unusual circumstances, issue a notice extending not more than ten (10) business days the period during which the FOIA Coordinator shall respond to the written appeal. Only one (1) written notice extending the response time is allowed.

ATTACHMENT A

FREEDOM OF INFORMATION ACT REQUEST

Date Requested: _____

Name: _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____

Please describe with specificity the document(s) you are requesting. If you are not sufficiently specific, we may not be able to identify the document(s) you request which may delay our response to your request:

You may pick up the report at **171 Lincoln Ave., Suite 20, Holland MI 49423 (616) 355-1010** or have it mailed to you after review and approval is complete. This can take up to five (5) working days to complete, or such later date as may be extended by law.

_____ I will pick up _____ Please mail to me

You will be charged the allowable fees and costs under FOIA or you need to show documentation showing that you, the requester, are receiving public assistance or other facts showing inability to pay due to indigence. You agree to pay such fees and costs prior to the release of the documents.

I, the requester, am not a party to any civil action against the Macatawa Area Express Transportation Authority, or by the Macatawa Area Express Transportation Authority against myself, and I am not acting on behalf of such a party involving the records I am requesting at this time. If I did not pay the fees and costs prior to the release of the documents, I agree to pay all allowable fees and any collection fees for my failure to pay the allowable fees and costs under FOIA within 30 days after the documents are ready or sent to me.

Signature

Department use only

No. of pages: _____ Pick up cost: _____ Mail cost: _____

ATTACHMENT B

FREEDOM OF INFORMATION ACT WORKSHEET

The fees and costs outlined below are being provided in response to your written request for a copy of a public record as indicated in the Macatawa Area Express Transportation Authority Freedom of Information Act Policy.

DATE THE FOIA REQUEST WAS RECEIVED:

PUBLIC RECORD(S) REQUESTED:

Unreasonably high costs to MAX because of:

1. TOTAL COPYING COSTS AS ITEMIZED BELOW: \$ _____

____ MAX-owned copier ____ Commercial Copier

Vendor/Facility Used: _____

Cost per copy \$0.10 x No. of copies ____ = \$ _____

Cost per computer disc \$0.50 x No. of disks ____ = \$ _____

Additional items:

Table with columns: Item, Quantity, Cost. Includes a blank line for additional items with a dollar sign.

2. TOTAL MAILING COSTS AS ITEMIZED BELOW: \$ _____

Cost of envelopes or other mailing device: _____

Postage costs: _____

3. ESTIMATED LABOR COSTS AS ITEMIZED BELOW: \$ _____

Due to the nature of this request, a labor fee is being charged for the research, examination, review and (if applicable) the deletion and separation of exempt from nonexempt information as provided in the Macatawa Area Express FOIA Policy. This fee is being charged due to:

Estimated Labor Hours ____ x \$ _____ = \$ _____

4. TOTAL COSTS OF ITEMS 1 THROUGH 3 ABOVE (Where Estimated Total Costs Exceed \$50.00) \$ _____

I, _____, am requesting copies under the FOIA. Based on the Macatawa Area Express Transportation Authority's approved FOIA Policy, I am submitting 50% of the estimated TOTAL COSTS as required, and confirm that the balance of the fees incurred will be paid before the public records are released to me. It is my understanding that the public record(s) I have requested shall be available, unless otherwise exempted, within five business days of the Macatawa Area Express' receipt of this confirmation.

SIGNATURE: _____

DATE: _____

**FREEDOM OF INFORMATION ACT
WORKSHEET FOR FUTURE ISSUANCES**

Under Section 4 of the Macatawa Area Express Transportation Authority's Freedom of Information Act Policy, a person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record for a period of time, not to exceed six months, unless extended. The FOIA Coordinator must sign the request form to confirm that the public record is one regularly published in order for this worksheet to be validated.

I, _____ have read and agree to the terms listed above:

Public record requested: _____

Period of request (not to exceed six months): _____

I request that the records be:

_____ Sent to me at: _____

OR

_____ Call to notify me that the public records are available for pick up at:

171 Lincoln Ave., Suite 20, Holland MI 49423 (616) 355-1010

Phone: _____

SIGNATURE: _____

DATE: _____

I confirm that the public record(s) requested above are regularly published by the Macatawa Area Express Transportation Authority.

Signature of FOIA Coordinator: _____