

**City of Brown City**  
4205 Main Street  
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## **Freedom of Information Act (FOIA) Policy and Procedures**

### **EXECUTIVE SUMMARY:**

The federal government and State of Michigan passed a series of laws called the Freedom of Information Act (FOIA). The FOIA requires that most information in the possession of the City of Brown City is available for anyone to look at. If a copy of this information is desired, a fee MAY be charged by the City to cover costs to locate and deliver the information requested.

Information is requested by using the City of Brown City Request For Public Record form available at City Hall or on the City's website (go to [www.ci.brown-city.mi.us](http://www.ci.brown-city.mi.us), then click on the "Public Notices" tab then open the "Request For Public Record - FOIA" file). Information can also be requested verbally or by letter, note, facsimile, or electronic mail. Once the request is received by the City, the FOIA Coordinator must provide the information, or provide the information for a fee, or provide a portion of the information (with or without a fee), or deny the request for information, or explain why the information does not exist, within five (5) business days. If the amount of information is large or other difficulties are encountered, the FOIA Coordinator may issue a ten (10) business day extension of the deadline.

If the person asking for information believes the FOIA Coordinator's decision concerning the availability of the information or the fee charged is in violation of the Freedom of Information Act (FOIA) or the City of Brown City FOIA Policy, the individual may file an appeal with either the City Council or the Sanilac County Circuit Court. A copy of the City of Brown City Freedom of Information Act (FOIA) Policy and Procedures is available at no cost at City Hall and is on the City's website (go to [www.ci.brown-city.mi.us](http://www.ci.brown-city.mi.us), then click on the "Public Notices" tab then open the "Brown City FOIA Policy" file).

Any questions concerning the Freedom of Information Act (FOIA), this policy, or the fees charged by the City should be directed to the FOIA Coordinator.

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## **Freedom of Information Act (FOIA) Policy and Procedures**

### **I. OVERVIEW**

Reason: The United States Congress and the Michigan Legislature created the Freedom of Information Act (FOIA) to hold public entities, such as the City of Brown City, more accountable for their conduct. It also sought to provide the public greater access to the governing process.

Purpose: The people shall be informed so that they may fully participate in the democratic process.

FOIA establishes procedures to ensure every citizen's right of access to government documents.

FOIA sets requirements for the disclosure of public records by all "public bodies" in the state. All state agencies, counties and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are included.

Generally, FOIA covers all records except those specifically cited in the law as exceptions or purely personal communications. "Public Records" 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, resolutions or ordinances, including guidelines, manuals and forms with instructions, adopted or used by the public bodies in the discharge of their functions, are also covered.

### **II. HANDLING A FOIA REQUEST**

#### **A. FOIA COORDINATOR AND RECORDS**

The City of Brown City ("the City"), as a "public body" shall designate an individual to accept and process FOIA requests regarding "public records."

The City Manager shall serve as City FOIA Coordinator, and may designate other individuals to act on his/her behalf, and may amend such designations at his/her discretion.

Responsibilities: The FOIA Coordinator shall be responsible for accepting and processing requests for the City's public records, and shall be responsible for granting or denying public records where appropriate.

Training: The FOIA Coordinator shall receive training in the application of FOIA and the use of required forms and letters, and shall be advised of amendments to FOIA as necessary. The FOIA Coordinator shall seek the advice of the City Attorney where appropriate, when questions of legal interpretation arise.

Filed Requests: A FOIA Coordinator shall keep all FOIA requests, responses and appeals on file for no less than one (1) year from the date of final response or written decision on appeal, whichever is later.

Monitoring: The FOIA Coordinator shall ensure that any FOIA requests he/she may receive by electronic device or system are monitored and responded to by a responsible person when the FOIA Coordinator will not have access to said device or system for more than one (1) business day.

"Public records" are writings owned, used, retained and/or in the possession of a public body during the performance of official function.

Additional Definitions:

Exempt Records: Records that cannot be disclosed.

Non-Exempt Records: Records that must be disclosed.

Disclose: Act of providing public records to the requesting party.

Redact: To obscure or remove exempt text/information from a public record.

"Writings" are broadly construed, e.g., handwriting, typewriting, photographs, and "every other means of recording". FOIA is intended to cover anything that a public body keeps recorded, including audio/video recordings and electronically stored Information.

Purely private communications about private matters are not "public records."

Electronically stored communication: Broad interpretation of statute and definition of term "writing" encompasses electronically stored communication. This includes e-mail and text messages.

## B. THE REQUEST

A person has a right to inspect, copy, or receive copies of the public records of a public body.

Requests must be in writing with enough detail / specificity to enable the FOIA Coordinator to locate the records. However, the City may provide requested information available in public records without receipt of a written request.

A person may subscribe to a public entity for future issuances of public records for up to 6 months. This only applies to public records created/issued on a regular basis, such as agendas or meeting minutes.

Prisoner Requests: FOIA does not apply to individuals serving a sentence of imprisonment in either state and/or county correctional facilities. In this circumstance, the individual must be serving a sentence and not just awaiting trial.

Junk or Spam Filters: if a written request is sent by electronic mail (browncty@greatlakes.net) 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.

## C. THE RESPONSE

The City must furnish a requesting person a reasonable opportunity for inspection and examination of its public records.

The City must furnish reasonable facilities for making memoranda or abstracts from its public records during usual business hours.

The City does not have to create a new public record, compilation, summary or list in response to a request.

Non-Exempt Records: The FOIA Coordinator must forward the records within live (5) business days of receiving the request. The Coordinator should also prepare an accompanying letter indicating the specific records being produced.

Time Extension: The City is entitled to a one (1) time ten (10) business day extension to respond to a FOIA request.

Exempt Records: The FOIA Coordinator must prepare a written response indicating the request is denied. Also, the Coordinator must cite a specific statutory basis for the denial, e.g., specific exemptions in MCLA 15.243, such as attorney-client privilege, and/or any other statutory exemptions. See III. RECORDS EXEMPT FROM DISCLOSURE below for a detailed list.

Mixed Records: The FOIA Coordinator must prepare a written response informing the requestor that the City is only disclosing part of requested records. The Coordinator must also inform the person of the specific reason for the non-disclosure of the withheld records.

Non-Existent Records: The FOIA Coordinator must prepare a written response informing the requesting party that the information sought does not exist.

Redacted Records: The FOIA Coordinator must prepare a written response describing any portions of the record that are separated or deleted from disclosure.

Failure to Respond: Constitutes a final determination to deny the request.

The FOIA Coordinator must inform the requesting party of their rights of appeal.

The FOIA Coordinator must include free written copies of the City's FOIA Policy and Procedures and the written summary with the written response.

#### D. REQUIRED PROCEDURES AND GUIDELINES

Before the City may recover any costs under FOIA, it must establish and make publicly available procedures and guidelines to implement FOIA.

The City must post and maintain the policy and procedures and its summary on its website ([www.ci.brown-city.mi.us](http://www.ci.brown-city.mi.us)).

The City shall make these procedures and the summary available to the general public by providing free copies of the policies and procedures and summary in the City's response to a written request or upon request by visitors to City Hall.

The City shall include the use of a standard form for the detailed itemization of any fee amount permitted under FOIA. The form will list and explain the allowable charges for each of the six (6) fee components allowed.

The failure of the City to have the policy and procedures and summary does not relieve the City of its responsibilities under FOIA. It only prevents the City from charging fees or deposits allowed by FOIA.

#### E. WEBSITE CONSIDERATIONS

Since the City has an official Internet presence ([www.ci.brown-city.mi.us](http://www.ci.brown-city.mi.us)), any public record available to the general public on this site at the time of a FOIA request is exempt from any charges.

If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on the website, the FOTA Coordinator shall notify the requestor in the written response that all or a portion of the information is available on the website. The written

response, to the degree practicable, shall include a specific webpage address where the requested Information is available.

On the detailed itemization form, the City shall separate records available on the website from those that are not available on the website. If the public body has provided the website address to the requestor and the requestor stipulates that the public record be provided to the requestor in a paper format or other electronic form, the public body shall provide the records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual cost of providing the Information in the specified format.

#### F. REIMBURSEMENT OF COSTS

The only costs that may be recovered under FOIA are in the following six (6) categories described in the Act.

- 1) The City may charge for the labor associated with searching for, locating and examining of public records in conjunction with receiving and fulfilling a granted written request.
- 2) The City may charge that portion of labor costs, including necessary review, directly associated with the separating and deleting of exempt information from nonexempt information. If the City does not have a person on staff that is capable of separating and deleting the material, the City may use contracted labor to include law firms. The City may be reimbursed for third-party contractors it must hire in order to satisfy a FOIA request. This contracted labor must be stated specifically on the detailed itemization form and cannot exceed 6 times the state minimum hourly wage. The calculation of these labor costs still cannot be more than the hourly wage of the lowest paid employee capable of separating and redacting the requested information, whether or not that person is used to actually perform the service. All labor costs must be charged in "increments of 15 minutes" with all partial time increments "rounded down."
- 3) The City may charge for non-paper physical media (i.e., computer discs or other digital or similar media). It must be done at the most reasonably economical cost. This does not apply if the City lacks the technological capability necessary to provide the records in that format.
- 4) For paper copies, the actual incremental cost of necessary duplication or publication (i.e., cost of toner, paper and equipment lease or purchase), not including labor. This shall not exceed 10 cents per 8 1/2 x 11 inch or 8 1/2 x 14 inch sheet of paper. The public body must use double-sided printing if cost saving will occur and is available.
- 5) The cost of labor associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor. The calculation of these labor costs cannot be more than the hourly wage of

the lowest paid employee capable of this work. All labor costs must be charged in "increments of 15 minutes" with all partial time increments "rounded down."

- 6) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The City may not charge more for expedited shipping or insurance unless specifically stipulated by the requestor. Otherwise, the City may charge for the least expensive form of postal and postal delivery confirmation when mailing public records.

#### G. LIMITS ON FEES

The total fee the City can charge under the statute cannot be more than the itemized labor and duplicating costs for the response. No Profit! FOIA is not a revenue source.

Fringe Benefits: The City can recover an employee's fringe benefits. However, the fringe benefit cannot exceed 50% of the employee's actual hourly, labor cost.

Overtime Wages: The City cannot include overtime wages in the calculation of its labor costs unless the requesting party specifically agrees, in writing, to the overtime.

#### H. DEPOSITS

The City may seek a deposit for time-consuming and expensive FOIA responses. The threshold level for a good-faith deposit is \$50.00. The requested deposit may not be more than 1/2 of the estimated fee.

All deposits requested must include the City's cost calculation on an appropriate form.

Unclaimed FOIA Requests: The City may require a deposit of 100% of the estimated fee for an individual's subsequent FOIA request if the individual failed to pay the full amount for public records made available to them in a previous FOIA response. However, in order to do this, the following must occur:

- 1) The fee for the prior request cannot be more than 105% of the new request's estimated fee.
- 2) The records from the prior request must still be in the City's possession.
- 3) 90 days have passed since the City informed the requestor that the records were available.

#### I. INDIGENT PARTIES

The City will furnish a public record without charge for the first \$20.00 of the proposed fee if the individual provides adequate proof of their status. This waiver may be used by an individual twice during the same calendar year.

The City will not charge a nonprofit 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:

- 1) Is made directly on behalf of the organization or its clients.
- 2) 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.
- 3) Is accompanied by documentation of its designation by the state, if requested by the City.

## J. REQUESTER'S RIGHTS AND APPEALS

Appeal Options for Non-Disclosure: A requesting party may:

- 1) forward a written appeal to the City Council that specifically states why reversal is proper; or
- 2) seek judicial review of the denial in the circuit court. The requesting party has 180 days from the final determination to deny the request.

Within 10 business days after receiving a written appeal, the City Council shall do one of the following:

- 1) Reverse the disclosure denial.
- 2) Issue a written notice to the requesting party upholding the disclosure denial.
- 3) Reverse the disclosure denial in part and issue a written notice to the requesting party upholding the disclosure denial in part.
- 4) Under unusual circumstances, issue a notice extending the appeal period for not more than 10 business days. The City Council may not issue more than one notice of extension for a particular written appeal.

Venue and Standard for Review in the Circuit Court:

- 1) The proper venue for a non-disclosure case is Sanilac County Circuit Court.
- 2) The Sanilac County Circuit Court shall make its own determination and the burden is on the City to prove its denial was valid under the Act.

Appeal Options for Fees Charged:

The requesting party shall submit to the City Council a written appeal for a fee reduction that states the word "appeal" and identifies how the fee exceeds the written procedure and guidelines or the Act. Within 10 business days, the City Council shall do one 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 F. REIMBURSEMENT OF COSTS that supports the remaining fee. The determination shall include a certification from the Mayor as head of 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 the FOIA act.
- (c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the required fee. The determination shall include a certification from the Mayor as head of the City Council that the

statements in the determination are accurate and that the fee amount complies with the City's publicly available policy and procedures and FOIA.

- (d) Issue a notice extending for not more than 10 business days the period during which the Mayor as head of 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 Mayor as head of the City Council shall not issue more than 1 notice of extension for a particular written appeal.

If the appeal is denied or the Mayor as head of the City Council does not respond in a timely fashion the requesting party may file a case seeking a fee reduction. The case must be filed within forty-five (45) days after receiving notice of the required fee. If a case is filed under this section, a City is not required to complete the processing of the FOIA request until the court has resolved the fee dispute.

#### K. RESPONSE LETTER CHECKLIST

The FOIA Coordinator must ensure the response letter contains the following:

- 1) GRANTING REQUEST: Inform requester the City is providing public records sought in its "entirety." Include a list, which specifically details records provided;
- 2) DENYING REQUEST: Describe specific basis for denial, e.g., which exemption applies. Inform requester of their rights, e.g., appeal, file civil claim, and right to attorney fees;
- 3) PARTIAL GRANT/DENIAL: Inform requester the City is providing a portion of records sought. Include a detailed list of records provided. For non-disclosed records, coordinator must inform the specific basis for partial denial, as well as the requester's rights;
- 4) REDACTED REQUEST: Describe specific reason for any redacted portions of records produced;
- 5) NON-EXISTENT RECORDS: Inform party requested records do not exist.
- 6) ITEMIZED COST FORM: If a fee is to be charged, or a deposit is requested, the Itemized Cost Form must be attached.

### **III. RECORDS EXEMPT FROM DISCLOSURE**

The City of Brown City must use the exemption in its first response to a FOIA Request or lose its protection in a subsequent challenge regarding a FOIA decision.

The exceptions, in order of the Act:

**PRIVACY, MCL 15. 243 (a):** Information of personal nature which is clearly an unwarranted invasion of an individual's privacy.

**LAW ENFORCEMENT, MCL 15. 243 (b):** Investigative records compiled for law enforcement purposes. However, the protection only exists to the extent disclosure would:

- 1) Interfere with law enforcement proceedings;
- 2) Deprive a person's right to a fair trial;

- 3) Constitute an unwarranted invasion of a person's privacy;
- 4) Disclose a confidential source;
- 5) Endanger the life or safety of law enforcement personnel; or
- 6) Disclose law enforcement techniques or procedures.

JAIL SECURITY, MCL 15.243 (c): Records that would compromise a public body's ability to maintain the security of a penal/custodial institution.

OTHER STATUTORY EXEMPTIONS, MCL 15.243 (d): Records exempt under other statutes. The other exception(s) MCL must be specifically cited.

COMPILATION EXCEPTION, MCL 15.243 (e): A public record or information described in this section that 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 considerations originally giving rise to the exempt nature of the public record remain applicable.

TRADE SECRETS, MCL 15.243 (f): Trade secrets and/or financial information voluntarily submitted to the public body pursuant to a promise such information is to remain confidential.

STATUTORY PRIVILEGES, MCL 15.243 (g): Records subject to the attorney-client privilege and/or other statutory privileges.

ADDITIONAL PRIVILEGED MATERIAL, MCL 15.243 (h): Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

BID PROPOSALS, MCL 15.243 (i): Pending bid proposals, until time for public opening of bids. If a public opening is not conducted, bid is exempt from disclosure until the deadline for submission of bids or proposals expires.

REAL PROPERTY APPRAISALS, MCL 15.243 (1): Appraisals of real property until:

- 1) The time an agreement is entered into; or
- 2) Three (3) years since making appraisal, unless litigation regarding property has not ended.

TEST QUESTIONS, MCL 15.243 (k): Test questions/answers, scoring keys, and/or other examination material utilized for public employment, licenses or academics.

MEDICAL RECORDS, MCL 15.243 (1): Records containing an individual's medical, counseling, or psychological information.

ADVISORY COMMUNICATIONS BETWEEN PUBLIC BODIES, MCL 15.243(m): Communications and notes within a public body or between public bodies of an advisory nature to the extent such records cover information other than purely factual matters.

LAW ENFORCEMENT COMMUNICATION CODES, MCL 15.243(n): Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed, would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

ARCHAEOLOGICAL SITES, MCL 15.243 (o): Records indicating the exact location of archaeological sites.

TESTING FOR BIDDING PARTIES, MCL 15.243 (p): Testing data regarding whether a bidder meets a public body's specifications. Exemption only exists for one (1) year after public body completes testing.

ACADEMIC TRANSCRIPTS OF FINANCIALLY DELINQUENT STUDENTS, MCL 15.243 (g): Academic transcripts of an institution of higher learning of a student who is delinquent in payment of obligations to the institution.

CAMPAIGN COMMITTEE INFORMATION, MCL 15.243 (r): Records of a campaign committee, including a committee that receives money from a state campaign fund.

LAW ENFORCEMENT, MCL 15.243 (s): Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular interest, public records of law enforcement agency, the release of which would do any of the following:

- 1) Identify an informant, undercover officer, and/or plain clothes officer;
- 2) Disclose the address of an active/retired law enforcement officer and/or their family;
- 3) Disclose an agency's operational instructions for its officers;
- 4) Disclose the contents of staff manuals; and
- 5) Endanger the life/safety of an active/retired law enforcement officer and/or his family.

PUBLIC HEALTH INVESTIGATIONS, MCL 15.243(t): Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to one or more of the following:

- 1) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received; or
- 2) The fact that an allegation was received by the department, the fact that the department did not issue a complaint for the allegations and the fact that the allegation was dismissed.

SECURITY MEASURES, MCL 15.243(u): Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and

security procedures, to the extent that the records relate to the ongoing security of the public body.

**PENDING LITIGATION, MCL 15.243 (v):** Records pertaining to a pending civil action in which the requesting person is a party.

**SOCIAL SECURITY NUMBERS, MCL 15.243 (w):** Information or records that would disclose the social security number of an individual.

**PRESIDENTIAL SEARCH BY INSTITUTION OF HIGHER LEARNING, MCL 15.243 (x):** Certain records involved with the selection of a president of an institution of higher learning with specific limitations after candidates are named as finalists for the position.

**PUBLIC SAFETY INFORMATION, MCL 15.243 (v):** Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to: building; public works; and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body; capabilities and plans for responding to a violation of the Michigan anti-terrorism act; and emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

#### **IV: QUESTIONS:**

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