

MACOMB COUNTY
FOIA PROCEDURES AND GUIDELINES

Macomb County is committed to complying with requests for public records in accordance with the Michigan Freedom of Information Act, MCL 15.231 *et seq* ("FOIA"). Current laws, rates, and factors are subject to change. If there are any discrepancies between this document and FOIA, FOIA governs.

1. Availability of Procedures and Guidelines, and Its Summary

Online. These procedures and guidelines, and its summary, can be found on Macomb County's website, www.macombgov.org.

Upon Request. Visitors at Macomb County's offices may request a free paper copy.

With FOIA Response. When responding to a FOIA request, Macomb County will either provide a free copy of the Macomb County FOIA Procedures and Guidelines and the Macomb County FOIA Procedures and Guidelines Public Summary, or include the website link to these documents in its FOIA response.

2. Records Under FOIA

Subject to Disclosure. Public records that are prepared, owned, used, in the possession of, or retained by Macomb County in the performance of an official function, from the time they are created, are subject to disclosure under FOIA. Computer software is not a public record.

Judiciary and County Clerk Not Subject to FOIA. In accordance with MCL 15.232(h)(iv), the following entities are not public bodies subject to FOIA:

- Macomb County Circuit Court
- 42-1 Romeo District Court, 42-2 New Baltimore District Court
- Judges
- The Macomb County Clerk's Office when acting in the capacity as clerk to the Circuit Court.

Not Required to Create New Record. Macomb County is not required to create a new record, including any compilation, summary, or report of information that does not already exist. MCL 15.233(4) and (5).

Exemptions. Macomb County may exempt a record (or part of a record) from disclosure if it falls under one or more of the exemptions listed in MCL 15.243, or if another statute protects the record from disclosure.

3. FOIA Requests

Who May Request. Only an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity may make a FOIA request. An individual serving a sentence of imprisonment in a state or county correctional facility in Michigan or any other state, or in a federal correctional facility may not make a FOIA request.

FOIA Coordinator. The Macomb County Executive, acting pursuant to the authority at MCL15.236, has designated a member of the Office of Corporation Counsel to act as the FOIA Coordinator for the County and all of its component units. The FOIA Coordinator is to be the central contact for FOIA requests and responses. Upon receipt of a request for public records, The FOIA Coordinator will contact the County department having possession of the subject records and request that copies be forwarded to the Coordinator without delay. The Department shall comply with the Coordinator's request. Where a FOIA request is received directly by a County department, the department shall immediately forward the request and all responsive documents to the FOIA Coordinator. In all cases, the FOIA Coordinator shall make the determination regarding which records, or portions of records, must be disclosed, and which records, or portions of records are exempt from disclosure. He or she may, on a case by case basis, authorize other County staff to act as FOIA Officers to accept and process written requests for the County's public records and to approve denials. The Macomb County Executive, through the Office of Corporation Counsel, may develop internal policies that are consistent with State law and these procedures and guidelines to administer the acceptance and processing of FOIA requests.

How to Request. FOIA requests must be made in writing and describe the public record(s) sufficiently to enable Macomb County to find the public record(s). In addition, a FOIA request should provide a phone number and email address so that, if necessary, Macomb County can contact the requester to clarify a request. FOIA requests can be sent by mail, fax, or email to the Office of Corporation Counsel.

Receipt of Request by Macomb County Employee. If a Macomb County employee receives a verbal request for information that, to the best of the employee's knowledge is available on Macomb County's website, the employee must inform the requestor of this and provide the website address. If a Macomb County employee or officer receives a written FOIA request, he or she must promptly forward it to the Office of Corporation Counsel.

Requests Delivered to Spam/Junk-Mail. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a FOIA Coordinator until 1 business day after the electronic transmission is made. An emailed FOIA request delivered to a spam/junk-mail folder is not received by Macomb County until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator will keep a record of the time that the request was delivered and the time that the FOIA Coordinator first became aware of the request.

Retention. The FOIA Coordinator will keep a copy of all written FOIA requests on file for at least one year.

4. FOIA Responses

Generally. Macomb County will respond to a FOIA request within five business days after it receives a request by doing one of the following:

- Granting the request.
- Issuing a written notice to the requesting person denying the request.
- Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- Issuing a notice extending for not more than 10 business days the amount of time Macomb County may take to grant or deny the request. Macomb County will not issue more than one extension per request.

Redactions. If a record contains material that is not exempt from disclosure as well as material that is exempt from disclosure, Macomb County will separate the exempt and nonexempt material and provide the requestor with the non-exempt material.

Denials. If Macomb County denies all or part of a FOIA request, it will issue a signed, written notice that provides:

- The reason under FOIA, or other statute, for the denial.
- If no record exists, a statement that the record does not exist under the name given by the request or by another name reasonably known to Macomb County.
- If Macomb County provides only part of a record, a general description of the material redacted, unless doing so would reveal the contents of the exempt information and thus defeat the purpose of the exemption.
- An explanation of a requestor's further rights as indicated in MCL 15.235(d) and (e).

Providing Record Electronically. Macomb County will provide a public record electronically if asked by the FOIA requestor and if the County possesses the technological capacity to reasonably do so.

5. FOIA Fees

Invoice. Macomb County may charge a fee for fulfilling a FOIA request. Macomb County may also require a 50% good-faith deposit if an estimated fee exceeds \$50.00. When charging a fee or requiring a deposit, Macomb County will provide the requestor with a detailed itemization of the allowable charges for each of the six fee components, if applicable, within Macomb County's standard FOIA response letter or in another form that complies with FOIA.

Allowed Fees. Unless permitted otherwise by law, Macomb County may only charge for:

- The labor costs for searching, locating, examining, and redacting public records: Macomb County will not charge more than the hourly wage of its lowest-paid employee capable of performing these tasks, and may apply up to a 50% fringe benefit multiplier. Macomb County will calculate these labor costs using time increments of 15 minutes or more, with all partial time increments rounded down. Macomb County will not charge for redacting if it previously redacted the public record and the redacted version is still in Macomb County's possession. Macomb County will not charge for searching, locating, examining, and redacting unless these labor costs exceed \$50.00. Macomb County will provide a requestor with an estimate of these labor costs in compliance with FOIA.
- The labor costs for copying or printing public records, and for transferring records to an electronic format: Macomb County will not charge more than the hourly wage of its lowest-paid employee capable of performing these tasks and may apply up to a 50% fringe benefit multiplier. Macomb County will calculate these labor costs using time increments of 15 minutes or more, with all partial time increments rounded down.
- The actual and most reasonably economical cost of computer discs, computer tapes, or other digital or similar media storage devices for public records provided electronically.
- Paper copies of records, which will not exceed 10 cents per page for standard sized paper. Macomb County will use the most economical means available for making paper copies, including using double-sided printing.
- Mailing costs, which may include the least expensive form of postal delivery confirmation. Macomb County will not charge for expedited shipping or insurance unless the requestor asks for expedited shipping or insurance.

Record Already on Website. If Macomb County knows that a requested public record is available on its website, it will send a written response that notifies the requestor of this fact and provides the specific webpage address for the record. Macomb County will not charge any fees for this, but will indicate in its response what the fee would be if the requestor wants a copy of either printed or in an electronic format. Macomb County will provide a copy of the public record upon request and for the fee, which may include a 100% fringe benefit multiplier for any labor costs.

Fee Reduction for Late Response. If Macomb County provides a late response, it will reduce labor costs by 5% for each day late, with a maximum 50% reduction if the late response was willful and intentional, or if the written request included language that conveyed a request for information within the first 250 words of the body of a letter, fax, email, or attachment to email, or specifically included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy," or a recognizable spelling of such, or appropriate legal code reference for FOIA, on the front of an envelope, or in the subject line of an email, letter, or fax cover page. Macomb County will indicate the reduction to the requestor.

Effect of Non-Payment. If (1) an individual does not fully pay for public records that Macomb County made available on time, subject to payment, (2) 90 days have passed since Macomb County notified the individual in writing that the records were available, (3) Macomb County provided an estimate for the request, and (4) the final fee did not exceed 105% of the estimated fee, then for the next 365 days after the first request was made, Macomb County may require a 100% estimated fee deposit before it commences to fulfill another request from that individual. Macomb County will no longer require a 100% estimated fee deposit if it is subsequently paid in full for the request.

Fee Waivers. Macomb County may provide records without charge, or at a reduced charge, if it determines that doing so is in the public interest. Macomb County will also waive the first \$20.00 of a fee if:

- An individual who is entitled to information under this act submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. Macomb County will note the \$20 discount in the FOIA response. If a requestor is ineligible for a discount, Macomb County will explain to the requestor the reason for ineligibility in its written response. A requestor is ineligible if: (1) Macomb County has already provided the requestor with discounted copies of public records twice during that calendar year, or (2) the request is made in conjunction with outside parties who are offering or providing payment to the individual to make the request. Macomb County may require the requestor to provide an affidavit stating that the request is not being made in conjunction with outside parties in exchange for payment.
- The requestor is 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: (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 300.1931, and (3) is accompanied by documentation of its designation by the state, if requested by Macomb County.

6. FOIA Appeals

Appeal of FOIA Denial. Denial of a FOIA request may be appealed to the County Executive Office.

- If the County denies a FOIA request, the requester may either appeal the denial or initiate a civil action in the 16th Circuit Court.
- For appeals, the requestor should submit a written appeal that specifically states the word “appeal” and identifies the reason(s) for reversal. Within ten business days after receiving the appeal, the County Executive Office will do one of the following: (1) reverse the denial,

(2) uphold the denial, (3) reverse the denial in part and uphold the denial in part, or (4) under the unusual circumstances, issue a notice extending up to ten business days the period during which the department head will decide the written appeal. No more than one extension will be allowed per appeal.

Appeal of FOIA Fee. The amount charged for a FOIA fee may be appealed to the County Executive Office.

- The requestor should submit a written appeal that specifically states the word “appeal” and identifies how the required fee exceeds the amount permitted under the County’s available procedures and guidelines for FOIA. Within ten business days after receiving the appeal, the County Executive Office will do one of the following: (1) waive the fee, (2) reduce the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the remaining fee; the determination will include a certification that the statements in the determination are accurate and that the reduced fee amount complies with these procedures and guidelines and FOIA, (3) uphold the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the fee; the determination will include a certification that the statements in the determination are accurate and that the fee amount complies with these procedures and guidelines and FOIA, (4) issue a notice extending up to ten business days the period during which the head of the public body must respond to the written appeal. The head of the public body will not issue more than one extension per appeal.
- A requestor may appeal the decision regarding a FOIA fee by commencing a civil action. A requestor may not commence a civil action regarding a FOIA fee unless he or she first appealed the fee to the County Executive Office.

