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CITY OF GLADWIN **FREEDOM OF INFORMATION ACT POLICY**

PURPOSE: To establish procedures and guidelines for use by City Departments and employees regarding requests for public records and the costs and fees incurred when providing copies of public records pursuant to the Freedom of Information Act.

POLICY:

It is the public policy of the City of Gladwin that all persons, except those persons incarcerated in state or local correctional facilities are entitled to full and complete information regarding governmental decision-making, consistent with the Act. The people shall be informed so that they may fully participate in the democratic process. It is not the intention of this policy independently to create any duties or responsibilities of the City of Gladwin or its officers or employees, except as set forth in the Michigan Freedom of Information Act.

DEFINITIONS:

For purposes of this Policy:

1. "Act" means the Michigan Freedom of Information Act, being MCLA 15.231 et. Seq.
2. "Field name" means the label or identification of an element of a computer data base that contains a specific item of information and includes, but is not limited to, a subject heading such as a column header, data dictionary, or record layout.
3. "FOIA Coordinator" means the individual designated by the City to accept and process requests for public records under the Act.
4. "Person" means an individual, corporation, Limited Liability Company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.
5. "Public record" means a writing prepared, owned, used, in the possession of, or retained by the City of Gladwin in the performance of an official function, from the time it is created. Public record does not include computer software.
6. "Software" means a set of statements or instructions that, when incorporated in a machine usable medium, is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

7. "Unusual circumstances" means any one or a combination of the following, but only to the extent necessary for the proper processing of a request:
 - a. The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
 - b. The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.
8. "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.
9. "Writing" means handwriting, typewriting, printing, Photostatting, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

PROCEDURE FOR RESPONDING TO REQUESTS FOR PUBLIC RECORDS:

1. The City Clerk is hereby designated the City's "FOIA Coordinator" with the authority and responsibilities stated in the Act and this Policy.
2. The FOIA Coordinator shall be responsible for accepting and processing written requests for the City's public records under the Act and shall be responsible for approving a denial under Section 5 of the Act (MCLA 15.235).
3. If a request is received directly by a department director or their designee, the original shall be promptly forwarded to the FOIA Coordinator. The date the FOIA Coordinator receives the request determines when a response is due.
4. A written request made by facsimile, electronic mail, or other electronic transmission is not received by the City's FOIA Coordinator until one business day after the electronic transmission is made.
5. The City is not required to respond to oral requests for public record, but individual departments may do so for routine requests which can be granted immediately.
6. The City shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours.
7. A person desiring to inspect or receive a copy of a public record may make a written request to the City's FOIA Coordinator that describes the public record sufficiently to enable the City to find the public record.
8. Upon providing the City's FOIA Coordinator with a written request that describes a public record sufficiently to enable the City to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body, unless the requested public record is exempt from disclosure pursuant to Section 13 of the Act (MCLA 15.243), as amended.

9. When the FOIA Coordinator receives a written request for a public record, the FOIA Coordinator (or designee as provided for herein) shall, in not more than five (5) business days after the FOIA Coordinator receives the request, unless a longer time is agreed to in writing by the person making the request, respond to the request by one of the following:
 - a. Grant the request.
 - b. Issue a written notice to the requesting person denying the request.
 - c. Grant the request in part and issue a written notice to the requesting person denying the request in part.
 - d. Issue a written notice extending for not more than ten business days the period during which the City shall respond to the request. However, the City shall not issue more than one notice of extension for a particular request.
10. Failure to respond to a written request as provided for above constitutes the City's final determination to deny the request.
11. If a public record contains material which is not exempt from disclosure under the Act as well as material which is exempt, the FOIA Coordinator or designee responding to the written request for such public record shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.
12. Each City officer or employee authorized to respond to requests for public records may consult with the City Attorney's Office, as necessary, prior to responding.
13. A written notice denying a request for a public record in whole or in part is a final determination to deny the request or portion of that request. The written notice shall contain:
 - a. An explanation of the basis under the Act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
 - b. A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the City, if that is the reason for denying the request or a portion of the request.
 - c. A description of a public record or information on a public record that is separated or deleted if such separation or deletion is made.
 - d. A full explanation of the requesting person's right to do either of the following:
 - i. File a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial. All appeals to the head of the public body shall be heard by the City Council.
 - ii. Seek judicial review of the denial under Section 10 of the Act (MCLA 15.240), by commencing an action in the Circuit Court to compel the City's disclosure of the public records within 180 days after the City's final determination to deny a request.
 - e. Notice of the right to receive attorneys' fees and damages as provided in Section 10 of the Act (MCLA 15.240) if, after judicial review, the Circuit Court determines that the City has not complied with Section 5 of the Act (MCLA 15.235) and orders disclosure of all or a portion of a public record.

14. Within 10 days after receiving a written appeals, the City Council shall do one of the following:
 - a. Reverse the disclosure denial.
 - b. Issue a written notice to the requesting person upholding the disclosure denial.
 - c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
 - d. Under unusual circumstances, issue a notice extending for not more than ten business days the period during which the City Council may direct the response to the written request. The City Council shall not issue more than one notice of extension for a particular written appeal
15. The City Council is not considered to have received a written appeal until its first regularly scheduled meeting after the appeal is filed.
16. If the City Council fails to respond to a written appeal as provided above, or if it 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 nondisclosure by commencing an action in Circuit Court as provided for in Paragraph 14(d)(ii).
17. The custodian of a public record subject to disclosure under the Act shall, upon written request, furnish a requesting person a certified copy of a public record.
18. The Act does not require the City to make a compilation, summary, or report of information, nor does it require the City to create a new public record.

FEES TO BE CHARGED FOR PROVIDING PUBLIC RECORDS:

The City may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record according to the following guidelines:

1. The fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information.
2. In calculating the cost of labor incurred in duplicating and mailing and the cost of examination, review, separation, and deletion, the City shall not charge more than the hourly wage of the lowest paid full time employee capable of retrieving the information necessary to comply with a request.
3. Fees shall be uniform and not dependent upon the identity of the requesting person.
4. The City shall utilize the most economical means available for making copies of public records.
5. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt 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 these unreasonably high costs.
6. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge whenever the FOIA Coordinator or

- designee responding to the written request determines 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.
7. A public record search shall be made and a copy of the public record shall be furnished without charge for the first \$20.00 of the fee for each request to an individual who is entitled to information under the Act and who submits an affidavit stating that the individual is then receiving public assistance, or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigence.
 8. The City may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the anticipated authorized fee exceeds \$50.00. The deposit shall not exceed ½ of the total fee. **The City Clerk may require payment in full of all charges prior to delivery of requested materials, however this requirement is not intended to extend the time for response by the City.**
 9. The foregoing guidelines do not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute, or by City Council authorization.
 10. City employees shall use the attached form as a guide in calculating the amount of the fee and deposit to be charged. The per minute labor rate shown on it is the "A" step for an Office Assistant, and that should be used whenever an Office Assistant would be capable of performing the work for which a labor fee is to be charged, regardless of who actually does the work. However, if the City Officer or employee responding to the request determines, because of the complexity of the public records being requested or for other valid reasons, a higher skill level employee is minimally required to adequately perform the work, the per minute labor rate based on the "A" step wage rate for such employee may be used.
 11. Fees charged under this statute are independent of other fees charged by the City of Gladwin.

CITY OF GLADWIN
Freedom of Information Act Request Cost Worksheet

COPYING (PER COPY COST)

Copying costs may be charged if a copy of a public record is requested, or if a copy is required to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.

Up to 10 Pages		\$5.00
\$ _____ Cents Per Page	# of Pages _____	\$ _____

LABOR COST

A. Office Assistant Wage With Benefits		Total Cost:
Hourly Wage Charged: _____	# of Minutes: _____	\$ _____

<u>Mailing</u>	<u>Postage</u>	<u>Total Cost</u>
\$ _____ Per Stamp	Actual Postage: \$ _____	\$ _____

<u>Labor Cost for Separating Exempt from Non-Exempt Information (hourly wage)</u>	<u>Time (Minutes):</u>	<u>Total Cost</u>
Hourly Wage Charged: \$ _____	# of Minutes: _____	\$ _____

NOTE: Estimated Cost Exceeds \$50.00 Good Faith Deposit of 50% Required <u>BEFORE</u> Request Will Be Processed.	50% Deposit Date Paid: _____	\$ _____
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