



OAG Operations Manual

Section: Administrative Policies and Procedures

2-33

Subject: External Requests Under the Freedom of Information Act

Date: 07/14/2016

Approved by:

DR

POLICY

- 2-33.1 OAG policy is to fully comply with all external requests for information in accordance with the Freedom of Information Act (FOIA), subject to the strict adherence to the standards of our profession and to all statutes, rules, and regulations regarding confidentiality of specific information.

PROCEDURE

- 2-33.2 This procedure applies to all FOIA requests; including all external access to OAG working papers except: (1) requests initiated by the auditee, or a certified public accounting firm(s) working concurrently with the OAG, during the normal performance and completion of an audit, (2) requests initiated by federal inspectors general for routine quality control reviews, and (3) requests initiated by an accredited external peer review team. In most cases, exceptions (1) and (2) are coordinated by the respective audit division administrator, and exception (3) is coordinated by the Director of Professional Practice.

STATE STATUTES AND PROFESSIONAL STANDARDS

- 2-33.3 Sections 15.231 - 15.246 of the *Michigan Compiled Laws*, commonly known as the Freedom of Information Act, set forth statutory requirements for public access to information regarding affairs of government and official acts of government officials and employees. Because FOIA is very specific as to what information may or may not be released, the auditor is strongly encouraged to read Section 15.243 (exemptions from disclosure) in conjunction with this policy and procedure.
- 2-33.4 American Institute of Certified Public Accountants (AICPA) professional standards provide that working papers are the property of the auditor, subject to certain ethical limitations, and that the auditor should maintain the confidentiality of information contained in the working papers and adopt reasonable procedures for their safe custody.

SUBMISSION OF FOIA REQUEST

- 2-33.5 FOIA requests to the OAG can be sent by e-mail or mail.

The request should include the requestor's name, phone number, and mailing address. The request must describe the public record sufficiently to enable the OAG to find the public record.

PROCEDURE FOR PROCESSING EXTERNAL REQUESTS FOR INFORMATION UNDER FOIA

2-33.6

As the FOIA coordinator, the Director of Administration, or the Director's designated representative, will be responsible for receiving and acting upon all external requests for information under FOIA. If an OAG staff member receives a request directly, the request should be forwarded immediately to the FOIA coordinator for processing. It is the FOIA coordinator's responsibility, after consultation with appropriate individuals, to respond to all requests.

- a. **Response** - Within 5 business days of receiving a request, the OAG will respond to the request for a public record. The response will indicate whether the request will be granted or denied. The requestor may be notified that the time limit to respond has been extended by 10 business days.
- b. **Access** - If a request for access to records is granted, the FOIA coordinator will provide access to records in accordance with FOIA. The FOIA coordinator will decide, on a case-by-case basis, the records the requestor may access and the medium (hard-copy or electronic) they will be provided.
- c. **Fees** - FOIA permits the OAG to charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material, but only if the failure to charge a fee would result in unreasonably high costs to the OAG because of the nature of the request in the particular instance and the OAG specifically identifies the nature of these unreasonably high costs. The OAG will not charge a fee for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material that will take less than one hour. If the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt material will take more than one hour, a fee will be charged in accordance with this procedure pursuant to Section 15.234.

Fees will be itemized using the Freedom of Information Act Detailed Itemization of Fees form and will include:

- (1) Labor costs for:
 - (a) The search, retrieval, and examination of public records.
 - (b) The review of public records and the separation and deletion of exempt from nonexempt material.
 - (c) The duplication or publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on nonpaper physical media or through electronic means.

- (2) Nonpaper physical media costs, calculated using the actual and most reasonably economical cost of computer discs, computer tapes, and other digital and similar media provided by the OAG.
- (3) Duplication and publication costs, calculated using the actual total incremental cost of necessary duplication or publication of a public record, not including labor. The actual and incremental cost, calculated per sheet, shall be charged and will not exceed 10 cents per sheet of paper for letter or legal size paper. The OAG shall use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available.
- (4) Actual costs of mailing, using a reasonably economical and justifiable manner.

If a requestor submits an affidavit of indigency, the first \$20 of a fee will be waived. A requesting person must include a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

- d. **Deposit Requirements** - If the OAG estimates a fee to process a FOIA request greater than \$50, the OAG will require a good-faith deposit from the requestor before providing the public records to the requestor. The deposit shall not exceed one-half of the total estimated fee. Any written notice containing a notice of a deposit shall also contain a best-effort estimate by the OAG regarding the time frame, after a deposit is received, that it will take the OAG to provide the public records to the requestor. The time frame estimate is not binding upon the OAG, but the OAG shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on the State's public policy under Section 15.231 and the nature of the request in the particular instance.
- e. **Appeals of Denials and Fees** - If a request for a record is denied, in whole or in part, the FOIA coordinator will provide written notice to the requestor within 5 business days or within 15 business days if the time limit to respond has been extended by 10 business days. When a request is denied, the requestor will be provided with a full explanation of the reasons for the denial and the requestor's right to submit to the Auditor General a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial or to seek judicial review of the denial under Section 15.240. The requestor will also be notified of the right to receive reasonable attorneys' fees, costs, and disbursements and, under certain circumstances, punitive damages.

Similarly, if the OAG charges a fee, the requestor may submit to the Auditor General a written appeal that specifically states the word "appeal" and identifies the basis for which the fee should be reduced.

- f. **Exemptions** - Certain information, as specified in FOIA, is exempt from disclosure.

ADDITIONAL GUIDANCE FOR PROCESSING REQUESTS FOR ACCESS TO OAG WORKING PAPERS

- 2-33.7 It is the responsibility of the FOIA coordinator, after appropriate consultation with the Director of Audit Operations and the Director of Professional Practice, to provide access in accordance with FOIA and to maintain adequate security over the working papers. For purposes of this policy, working papers represent any records (including electronic files), as defined in the professional standards, created by the auditor during the conduct of any OAG audit or special project. Certain portions of OAG working papers may be exempt from disclosure. For each approved request, prior to any external access to the working papers, the respective audit division administrator, or the administrator's designated representative, must confirm in writing to the FOIA coordinator that, to his/her knowledge, all confidential information has been redacted and that the working papers meet all applicable professional standards, statutes, rules, and regulations regarding confidentiality. **Proprietary OAG documents and forms, such as audit programs and planning documents, shall not be provided to a requestor, unless required under the provisions of FOIA.**
- 2-33.8 Pursuant to FOIA, the FOIA coordinator will maintain a record of all requests received, the disposition of the requests, and the nature and number of copies provided as a result of those requests and maintain such record on file for no less than one year.
- 2-33.9 Section 4-03 [Working Paper Documentation] provides further guidance on maintaining the confidentiality of information in the working papers and on storing and retrieving working papers.
- 2-33.10 Questions concerning the Freedom of Information Act or the policy and procedure for external access to OAG records should be directed to the FOIA coordinator.