

WASHTENAW COUNTY EMPLOYEES' RETIREMENT SYSTEM

FREEDOM OF INFORMATION ACT POLICY & PROCEDURES

WHEREAS, the Washtenaw County Employees' Retirement Commission (the "Retirement Commission") is vested with the general administration, management and operation of the Washtenaw County Employees' Retirement System (the "Retirement System") and for making effective the provisions thereof, and

WHEREAS, the Retirement Commission has fiduciary duties to the members and beneficiaries of the Retirement System and shall discharge these duties solely in their interests for the exclusive purposes of providing benefits and defraying reasonable expenses, and

WHEREAS, it is the policy of the Retirement Commission to comply with the laws of this state and the United States consistent with these duties, and

WHEREAS, as a "public body" under the Michigan Freedom of Information Act ("FOIA"), Public Act 442 of 1976 as amended (MCL 15.231 *et seq*), the Retirement Commission has a legal obligation to process all written requests for Retirement System records in accordance with the requirements of the FOIA, and

WHEREAS, the FOIA was recently amended by Public Act 563 of 2014 ("PA 563"), with an effective date of July 1, 2015, and

WHEREAS, in light of the upcoming effective date of the amendments to the FOIA, the Retirement Commission desires to revise its policies and procedures with respect to Freedom of Information Act requests and responses thereto, therefore be it

RESOLVED, that the Retirement Commission hereby adopts the following Policy and Procedures for the administration of FOIA requests and responses:

I. GENERAL

A. Policy and Principles

- (1) It is the policy of the Washtenaw County Employees' Retirement System, consistent with the Michigan Freedom of Information Act, that all eligible persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.
- (2) The Retirement System's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and objective manner.
- (3) The Retirement Commission acknowledges that it has a legal obligation to disclose all non-exempt public records in its possession pursuant to a valid written FOIA request. The Retirement Commission further acknowledges that sometimes it is necessary to invoke the exemptions identified under the FOIA and other applicable law in order to ensure the effective operation of government and to protect the privacy of individuals.

- (4) The Retirement System will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records including, but not limited to those records containing personal and private information of members and beneficiaries of the Retirement System.

II. GENERAL ADMINISTRATION

A. FOIA Coordinator

- (1) The Retirement Commission, acting pursuant to the authority at MCL 15.236, designates the Retirement Administrator as the Retirement System's FOIA Coordinator. He or she shall be the individual responsible for processing all FOIA requests received by the Retirement System and approving all denials under the FOIA in consultation with the Retirement Commission's legal counsel.

B. FOIA Requests

- (1) All FOIA requests shall be submitted in writing and directed to the Retirement Commission. The request must sufficiently describe a public record so as to enable Retirement System personnel to identify and find the requested public record. No specific form to submit a request for a public record is required. However the Retirement Commission has approved and made available a FOIA Request Form for use by the public (FOIA Form-1).
- (2) Written requests for public records may be submitted to the Retirement System in person or by mail directed to the Washtenaw County Employees' Retirement System FOIA Coordinator / Retirement Administrator. Requests may also be submitted electronically by facsimile and e-mail. Requests for Retirement System records that are not received by the WCERS FOIA Coordinator will not be processed. Requests addressed to the Retirement Commission or Retirement System that are received by County personnel shall be promptly forwarded to the FOIA Coordinator for processing.
- (3) If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a spam or junk-mail folder, the request is not deemed received until 1 day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.
- (4) A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided to him or her in lieu of paper copies. The Retirement System will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.
- (5) A person who makes a verbal, non-written request for information believed to be available on the Retirement System's webpage, where practicable and to the best ability of the Retirement System representative receiving the request, shall be informed of the pertinent website address.
- (6) The FOIA Coordinator shall keep a copy of all written requests for public records received

by the Retirement System on file for a period of at least 1 year.

III. PROCESSING A FOIA REQUEST

A. Responding to a FOIA Request

- (1) Within 5 business days of receipt of a FOIA request the Retirement System will issue a response, unless otherwise agreed to in writing by the person making the request. The Retirement System will respond to the request in one of the following ways:
 - a. Grant the request;
 - b. Issue a written notice denying the request;
 - c. Grant the request in part and issue a written notice denying in part the request;
 - d. Issue a notice indicating that due to the nature of the request the Retirement System needs an additional 10 business days to respond; or
 - e. Issue a written notice indicating that the public record requested is available at no charge on the Retirement System's website.
- (2) If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request (FOIA Form-2). If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.
- (3) If the estimated cost of processing a FOIA request is expected to exceed \$50, or if the requester has not fully paid for a previously granted request, the Retirement System will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requester with a detailed itemization of the allowable costs estimated to be incurred by the Retirement System to process the request and also provide a best efforts estimate of a time frame it will take the Retirement System to provide the records to the requester upon receipt of the required deposit (FOIA Form-3). The best efforts estimate shall be nonbinding on the Retirement System, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.
- (4) The Retirement System shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect Retirement System records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal business operations of the Retirement System.
- (5) The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record to the person requesting the public record.
- (6) A webpage link to a copy of this Policy and Procedures shall be provided to with the response to all written requests for public records.

B. Denial of a FOIA Request

- (1) If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide, as applicable:
 - a. An explanation why a requested public record is exempt from disclosure; or
 - b. A certificate that the requested record does not exist under the name or description provided by the requester, or another name reasonably known by the Retirement System; or
 - c. An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
 - d. An explanation of the person's right to submit an appeal of the denial to either the Retirement Commission or seek judicial review in the Washtenaw County Circuit Court; and
 - e. An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of up to \$1,000, should the requester prevail in Circuit Court.
 - f. The Notice of Denial shall be signed by the FOIA Coordinator.
- (2) If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines provided under the FOIA.

IV. FEES

A. Generally

- (1) A fee shall be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information in all instances where the failure to charge a fee would result in unreasonably high costs to the Retirement System because of the nature of the request in the particular instance, and the Retirement System specifically identifies the nature of the unreasonably high costs.
- (2) The following factors shall be used to determine an unreasonably high cost to the Retirement System:
 - a. The particular request incurs costs greater than incurred from the typical or usual request received by the Retirement System.
 - b. Volume of the public record requested
 - c. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
 - d. The available staffing to respond to the request.
 - e. Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

- (3) The Retirement System may charge for the following costs associated with processing a FOIA request:
- a. Labor costs directly associated with searching for, locating and examining a requested public record;
 - b. Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed;
 - c. The actual cost of computer discs, computer tapes or other digital or similar media;
 - d. The cost of duplication or publication, not including labor, of paper copies of public records;
 - e. The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means; and
 - f. The actual cost of mailing or sending a public record.

B. Calculation

- (1) Labor costs will be calculated based on the following requirements:
- a. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
 - b. The cost of labor directly associated with duplication, publication or transferring records to non-paper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down.
 - c. Labor costs will be charged at the hourly wage of the lowest-paid Retirement System employee capable of doing the work in the specific fee category, regardless of who actually performs work.
 - d. If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of person or firm who does the work and the labor cost may not exceed an amount 6 times the state minimum hourly wage.
 - e. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The Retirement System may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- (2) The cost to provide records on non-paper physical media when so requested will be based on the following requirements:
- a. Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
 - b. This cost will only be assessed if the Retirement System has the technological capability necessary to provide the public record in the requested non-paper physical media format.

- (3) The cost to provide paper copies of records will be based on the following requirements:
 - a. Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
 - b. The Retirement System may provide records using double-sided printing, if available.
- (4) The cost to mail records to a requester will be based on the following requirements:
 - a. The actual cost to mail public records using a reasonably economical and justified means.
 - b. The Retirement System shall charge for the least expensive form of postal delivery confirmation.
- (5) If the FOIA Coordinator does not respond to a written request in a timely manner, the following fee reductions shall be applied:
 - a. Reduce the labor costs by 5% for each day the Retirement System exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - i. The late response was willful and intentional.
 - ii. The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information.
 - iii. The written request included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy” or a recognizable misspelling of such, or legal code reference to MCL 15.231, *et seq.* or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.
 - b. Fully note the charge reduction in the Detailed Itemization of Costs Form (FOIA Form-2).

C. Fee Deposits

- (1) If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the FOIA Coordinator, the requester will be asked to provide a deposit not exceeding one-half of the total estimated fee.
- (2) If a request for public records is from a person who has not fully paid the Retirement System for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:
 - a. the final fee for the prior written request is not more than 105% of the estimated fee;
 - b. the public records made available contained the information sought in the prior written request and remain in the Retirement System's possession;
 - c. the public records were made available to the individual, subject to payment, within

- d. 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
 - e. the individual is unable to show proof of prior payment to the Retirement System; and
 - f. the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
- (3) The FOIA Coordinator will not require an estimated 100% fee deposit if any of the following apply:
- a. the person making the request is able to show proof of prior payment in full to the Retirement System;
 - b. the Retirement System is subsequently paid in full for the applicable prior written request; or
 - c. 365 days have passed since the person made the request for which full payment was not remitted to the Retirement System.

D. Waiver of Fees

- (1) The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:
- a. indigent and receiving specific public assistance; or
 - b. if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.
- (2) An individual is not eligible to receive the waiver if:
- a. the requester has previously received discounted copies of public records from the Retirement System twice during the calendar year; or
 - b. the requester requests information in connection with other persons who are offering or providing payment to make the request.
- (3) A nonprofit organization designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, or their successors, if the request meets all of the following requirements:
- a. is made directly on behalf of the organization or its clients;
 - b. is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code, 1974 PA 258 [MCL § 330.1931]; and
 - c. is accompanied by documentation of its designation by the State.

V. APPEALS

A. Appeal of a Denial of a Public Record

- (1) When a requester believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial to the Retirement Commission of the Retirement System. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requester is seeking a reversal of the denial.
- (2) The Retirement Commission is not considered to have received a written appeal of either a denial or a fee amount until its first regularly scheduled meeting following the submission of the appeal.
- (3) Within 10 business days of receiving the appeal the Retirement Commission will respond in writing in one of the following ways:
 - a. Reverse the disclosure denial;
 - b. Uphold the disclosure denial;
 - c. Reverse the disclosure denial in part and uphold the disclosure denial in part; or
 - d. Under unusual circumstances, issue a notice of extension for not more than 10 business days to respond to the appeal.
- (4) Regardless of whether a requester submitted an appeal of a denial to the Retirement Commission, he or she may file a civil action in Washtenaw County Circuit Court within 180 days after the Retirement System's final determination to deny the request.

B. Appeal of an Excessive FOIA Processing Fee

- (1) If a requester believes that the fee charged by the Retirement System to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the Retirement Commission. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.
- (2) Within 10 business days after receiving the appeal, the Retirement Commission will respond in writing by:
 - a. waiving the fee;
 - b. reducing the fee with a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Retirement Commission that the statements in the determination are accurate and the reduced fee amount complies with this Policy and Procedures and Section 4 of the FOIA;
 - c. upholding the fee with a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Retirement Commission that the statements in the determination are accurate and the fee amount complies with this Policy and Procedures and Section 4 of the FOIA; or

- d. issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Retirement Commission will respond to the written appeal.
- (3) Within 45 days after receiving notice of the Retirement Commission's determination of a fee appeal, a requester may commence a civil action in Washtenaw County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the Retirement System is not obligated to process the request for the public record until the Court resolves the fee dispute.

VI. MISCELLANEOUS

A. Conflicts

- (1) To the extent that this Policy and Procedures conflict with previous FOIA policies promulgated by the Retirement Commission, this Policy and Procedures shall supersede all prior policies and shall control.
- (2) To the extent that any provision of this Policy and Procedures or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control.

B. Effective Date

- (1) This FOIA Policy and Procedures become effective July 1, 2015.