

MERS FREEDOM OF INFORMATION ACT POLICY

(Adopted as "Internal MERS Procedures for Processing FOIA Requests on March 12, 1997; revised March 14, 2012, May 14, 2015 and Dec 5, 2019)



I. INTRODUCTION

1. The State of Michigan's Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.*, regulates the disclosure of public records by all public bodies in the state. "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it is created. "Public record" does not include computer software. In general, all MERS records, except those specifically subject to exemptions under Section 13 of the FOIA, are covered by the FOIA.
2. As required by the FOIA, MERS shall publish a written public summary of the specific procedures and guidelines relevant to the general public describing how to submit FOIA requests to MERS, how to understand MERS' responses, deposit requirements, fee calculations, and rights to appeal. This summary shall be posted on MERS' website. A copy of the summary is attached as Appendix A and incorporated herein.

II. FOIA COORDINATOR

1. Pursuant to the FOIA, MERS' Chief Executive Officer is the FOIA Coordinator. However, the Chief Executive Officer may designate another individual to act as the FOIA Coordinator.
2. The FOIA Coordinator shall be responsible for accepting and processing all written requests for public records under the FOIA, and shall be responsible for the denial of requests pursuant to Section 5 of the FOIA.

III. PROCEDURES AND GUIDELINES

A. Receipt of FOIA Requests

1. All individuals desiring to inspect or receive a copy of a public record shall make a written request to MERS' FOIA Coordinator that describes the public record sufficiently to enable the FOIA Coordinator or a designee to identify and locate the public record ("FOIA request"). FOIA requests must include (unless requested by a person who qualifies as indigent under the FOIA) the requestor's complete name (or name of the requestor's individual agent if the requestor is an entity), address and either phone number or email address, and may be received by mail, facsimile, electronic mail or by the use of the FOIA form on MERS' website.
2. All FOIA requests shall be immediately date and time-stamped, and routed to the FOIA Coordinator upon receipt. The date the request is received by any MERS employee (not date received by the FOIA Coordinator) is the date the request is considered received, except that a FOIA request made by facsimile, electronic mail, or other electronic transmission is deemed received by MERS one business day after the electronic submission is made. If a request is delivered to a spam or junk email folder, the request is deemed received by MERS one business day after it is discovered in such folder.
3. Upon the receipt of a request for public inspection, the FOIA Coordinator or a designee shall furnish the requestor a reasonable opportunity for inspection and examination of the requested public records, subject to applicable exemptions, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during regular business hours.

4. A requestor may stipulate that the public records requested be provided via electronic mail, or otherwise electronically provided, in lieu of paper copies. Notwithstanding the foregoing, such stipulation must be within the technological capabilities of MERS.
5. A requestor may subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to six months, at the request of the requestor/subscriber, and shall be renewable.
6. If a requested public record is posted on MERS' website or webpage, the FOIA Coordinator shall notify the requestor in writing of such availability and provide the direct internet address or link to obtain such public record. If, after receiving such written notification from the FOIA Coordinator, the requestor notifies MERS that he or she still wants MERS to provide a copy of the available public record, in any format, MERS shall process such request and may impose additional labor costs as specified within Section C below.

B. FOIA Request Processing

1. Upon receiving a FOIA request, a requestor has the right to inspect, copy, or receive copies of the requested public record(s), unless the requested public record is exempt from disclosure pursuant to Section 13 of the FOIA. New public records, compilations, summaries, and/or reports of information shall not be created in response to a FOIA request.
2. Upon receipt of a FOIA request, the FOIA Coordinator or any other designee, shall, not more than five (5) business days after MERS receives the request, respond to the request in writing by one of the following:
 - a. Grant the request;
 - b. Issue a written notice to the requestor denying the request;
 - c. Grant the request in part and issue a written notice to the requestor denying the request in part; or
 - d. Issue a written notice extending, for not more than ten (10) business days, the period during which MERS shall respond to the request.
3. Any failure to respond to a FOIA request as provided for above constitutes a denial of the request by MERS.
4. Any written response denying a FOIA request, in whole or in part, is a final determination to deny the request or portion of that request. A written denial should contain the following, as applicable:
 - a. An explanation of the basis under the FOIA for the determination that the requested public record(s), or portion(s) thereof, is exempt from disclosure;
 - b. A statement that the requested public record(s) do not exist under the name/description given by the requestor or by another name reasonably known to MERS;
 - c. A description of a public record(s) or information on a public record that is separated or deleted if such separation or deletion is made;
 - d. A full explanation of the requestor's right to either file an appeal with the Retirement Board or seek judicial review of the denial pursuant to Section 10 of the FOIA; and

- e. Notice that a requestor may receive attorneys' fees and damages pursuant to the FOIA if the Court determines that MERS has not complied with Section 5 of the FOIA and orders disclosure of all or a portion of the requested public record(s).

C. Deposit and Fees

1. Fees for responding to a FOIA request shall include duplication (copying) costs and mailing costs. Copying costs shall not exceed 10 cents per page (8½ x 11 and 8½ x 14). MERS shall use the most economical method of copying (e.g., double-siding, etc.) and the least expensive form of postal delivery, unless the requestor specifically requests a more expensive method.
2. The cost of hourly labor may also be charged if the failure to do so will result in unreasonably high costs to MERS because of the nature of the request in a particular instance. In such a case, MERS shall identify the nature of these unreasonably high costs. For purposes of this Policy, "unreasonably high costs" shall generally mean calculated labor costs that are estimated to exceed \$50.00, inclusive of salary/ wage and fringe benefits.
3. Labor costs shall include the cost of the search, examination, review, separation, and/or redaction/deletion of exempt information from non-exempt information in order to fulfill a request.
4. Labor costs will be calculated using the salary/wage of the lowest paid MERS employee capable of searching for, locating, and examining the public record(s), regardless of whether that person is available or actually performs the labor. Labor costs shall be charged in increments of at least 15 minutes or more with all partial time increments rounded down. MERS may also add up to 50% to the applicable labor charge to cover or partially cover the cost of fringe benefits; if it does so, MERS will clearly note the percentage multiplier used to account for benefits in the detailed itemization form. Subject to the 50% limitation, MERS shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Notwithstanding the foregoing, 100% of fringe benefit costs may be added to the applicable labor charge if a requestor is notified in writing that public records are available on MERS' website or webpage and the requestor still requests that MERS provide a copy, in any format, of the available public record.
5. Overtime wages shall not be included in the calculation of labor costs unless the requestor specifically approves the use of overtime in writing, and overtime wages are clearly noted in the detailed itemization form.
6. If MERS does not employ a person in-house who is capable of separating exempt from non-exempt information in a particular instance, as determined by the FOIA Coordinator, it may utilize an outside contractor. In those instances, MERS shall note the name of the contractor on the detailed itemization form. The cost of the contractor's labor, including necessary review directly associated with separating and deleting exempt information from non-exempt information, shall not exceed an amount equal to 6 times the state minimum hourly wage rate.
7. MERS will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.
8. MERS may require a good faith deposit (not to exceed 50% of the total labor and duplication costs) from the requestor, if the total estimated fee exceeds \$50.00. A request

for a good faith deposit shall include a detailed itemization of the fee MERS estimates or charges pursuant to the Act. Additionally, a request for a good faith deposit shall include a best efforts estimate regarding the time frame it will take to comply with the Act in providing the public records to the requestor. MERS may require a 100% deposit from a requestor who has not previously paid a fulfilled FOIA request, subject to the conditions set forth in the Act.

9. All fees and deposits calculated under this Policy shall be listed within a standard fee itemization form that shall be provided to the requestor. A copy of the form is attached to this Policy and incorporated by reference.
10. Deposits must be received by MERS within 48 days of the date the notice of deposit is sent (45 days after receipt; the notice is deemed received 3 days after it is sent) or the FOIA request will be considered abandoned.
11. Pursuant to Section 4(2) of the Act, MERS shall search for and furnish a copy of a public record without charge for the first \$20.00 of the fee for each request made by either of the following:
 - a. An individual who is entitled to information under the Act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigence. If an individual is ineligible for a discount, then MERS will inform the individual of the specific reason for the ineligibility in its written response. The right to financial assistance for indigent individuals shall not apply where:
 - (i) an individual has received discounted copies of public records from MERS twice during the calendar year; or
 - (ii) an individual requests information in conjunction with outside parties who are offering or providing payment, or other remuneration to the individual to make the request.
 - b. A non-profit 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, provided all of the following requirements are satisfied:
 - (i) the request is made directly on behalf of the organization or its clients;
 - (ii) the request is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931; and
 - (iii) the request is accompanied by documentation of its designation as a non-profit, if requested by MERS.
 - c. MERS may waive any charges if the FOIA Coordinator determines the cost is *de minimis*. For purposes of these procedures and guidelines, "*de minimis*" shall mean a calculated fee that is estimated to be less than \$10.00, inclusive of labor costs, duplication and mailing.

D. Fee Dispute Appeal

1. If the requestor believes the deposit required or fee estimated or charged for the request exceeds the amount permitted under this Policy or Section 4 of the Act, the requestor is required to submit to the Retirement Board a written appeal for a fee reduction that specifically states the word “appeal” and identifies how the required deposit or fee exceeds the amount permitted under these procedures and guidelines or Section 4 of the Act.
2. Within 10 business days after receiving a written appeal, the Retirement Board shall do one of the following:
 - a. Waive the fee.
 - b. Reduce the deposit or fee and issue a written determination to the requestor indicating the specific basis under Section 4 of the Act that supports the remaining fee. The determination shall include a certification from the Retirement Board that the statements in the determination are accurate and that the reduced deposit or fee complies with these procedures and guidelines and Section 4 of the Act.
 - c. Uphold the deposit or fee and issue a written determination to the requestor indicating the specific basis under Section 4 of the Act that supports the required deposit or fee. The determination shall include a certification from the Retirement Board that the statements in the determination are accurate and that the deposit or fee complies with these procedures and guidelines and Section 4 of the Act.
 - d. Issue a notice extending, for not more than 10 business days, the period during which the Retirement Board shall respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Retirement Board shall not issue more than one notice of extension for a particular written appeal.
3. If a requestor disagrees with the Retirement Board’s determination, the requestor may, within 45 days of the determination, commence an action in Circuit Court in the County in which MERS is located, to seek a deposit or fee reduction.

E. Appeals of FOIA Request Denials

1. If a requestor desires to appeal a denial of a request for a public record, in whole or in part, the requestor may submit a written appeal to the Retirement Board or may seek judicial review of the denial, pursuant to Section 10 of the Act. A written appeal shall specifically state the word “appeal” and identify the reason(s) for reversal of the denial.
2. Within 10 business days after receiving a written appeal, the Retirement Board shall do one of the following:
 - a. Reverse the disclosure denial.
 - b. Issue a written notice to the appellant upholding the denial.
 - c. Reverse the denial in part and issue a written notice to the appellant upholding the denial in part.
 - d. Under unusual circumstances, issue a notice extending, for not more than 10 business days, the period during which the Retirement Board shall respond to the written appeal. The Retirement Board shall not issue more than 1 notice of extension for a particular written appeal.
3. The Retirement Board is not considered to have received a written appeal until its next regularly scheduled meeting after the appeal is submitted.

4. Failure by the Retirement Board to respond to an appeal within the time periods set out above shall be considered a decision to uphold the disclosure denial.
5. If a disclosure denial is upheld in whole or in part, the appellant may seek, within 180 days after the final determination to deny a request, judicial review of the nondisclosure by commencing an action in the Circuit Court for the County in which MERS is located.

IV. RECORDS RETENTION

All FOIA requests shall be maintained by the FOIA Coordinator for at least one year, in accordance with the MERS Document Retention Policy.

V. COMPLIANCE WITH FOIA

In all cases where this Policy does not specifically address a situation, or conflicts with a provision of the FOIA or other applicable statute, the FOIA or other applicable statute shall control.

END OF POLICY

2019-12-05 FOIA Policy