

FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

East Shore Leadership Academy

East Shore Leadership Academy establishes the following procedures and guidelines to implement Michigan's Freedom of Information Act (FOIA), as amended by 2014 PA 563. See MCL 15.231 *et seq.* These procedures and guidelines shall hereinafter be referred to as the "Academy's FOIA Policies." A copy of the Academy's FOIA Policies shall be available and easy to locate on the Academy's website.

Section 1: Definitions

For purposes of the Academy's FOIA Policies, the following definitions apply:

- 1.1 Academy:** East Shore Leadership Academy
- 1.2 FOIA:** The Michigan Freedom of Information Act, MCL 15.231 et seq.
- 1.3 FOIA Coordinator:** The individual responsible for accepting and processing requests for the Academy's public records under the FOIA, and for approving a denial of such a request. The FOIA Coordinator of East Shore Leadership Academy is hereby the Academy's School Leader. If the Academy has more than one School Leader at any given time, both shall serve as FOIA Coordinators for the Academy, with all the responsibilities and powers that accompany the position. These responsibilities and powers are discussed further below in **Section 2: Personnel Authorized to Process FOIA requests.**
- 1.4 Person:** 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 correction facility in this state or any other state, or in a federal correctional facility.
- 1.5 Public record:** A writing prepared, owned, used, in the possession of , or retained by the Academy in the performance of an official function, from the time it is created. Public record does not include computer software. Public records are separated into two classes:
 - a. Those that are exempt from disclosure under section 13 of the FOIA, MCL 15.243.
 - b. All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under the Act.

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1.6 Standard Itemized Fee Form: The standard form used by the Academy to provide a detailed itemization of fees charged for responses to written FOIA requests, as required by MCL 15.234(4). The form clearly lists and explains the allowable charges for the six fee components listed under MCL 15.234(1).

1.7 Written Public Summary: A summary of the Academy's specific procedures and guidelines for implementing the FOIA, "written as to be easily understood by the general public," which shall include the following information:

- a. How to submit written requests to the Academy;
- b. How to understand the Academy's written responses to FOIA requests;
- c. Deposit requirements;
- d. Fee calculations; and
- e. Avenues for challenge and appeal.

The written public summary shall be posted and maintained on the Academy's website.

1.8 Written request: A writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

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Section 2. Personnel Authorized to Process FOIA Requests

- 2.1** The Academy's FOIA Coordinator has the authority and responsibility to:
- a. Accept and process FOIA requests;
 - b. Deny and approve the denial of FOIA requests; and
 - c. Designate individuals to act on his/her behalf in accepting and processing requests for the Academy's public records, and in approving denials of such requests.
- 2.3 Others.** All Academy personnel not authorized to respond to a FOIA request under this Section shall direct the request to the FOIA Coordinator or his/her designee.
- 2.4 Non-FOIA Requests for Information.** The procedures in these FOIA policies apply to requests specifically made under the FOIA, and do not apply to routine day-to-day inquiries to the Academy for information. Such routine inquiries shall be handled appropriately by Academy staff.

Section 3: Requests to Inspect or Copy Public Records

- 3.1 Written Request Required.** A request to inspect, copy, or receive copies of a public record under the FOIA must be made in writing and must sufficiently describe the public record so that the Academy can find the public record.
- 3.2 Request for Subscription.** A person may also make a written request to 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 subscriber, and shall be renewable.
- 3.3 Date Facsimile or Electronic Transmission Received.** A request for records made by facsimile, electronic mail, or other electronic transmission will be considered received by the Academy one business day after the electronic transmission is made, in accordance with MCL 15.235(1).
- a. If a written request sent by electronic mail is delivered to the Academy's or FOIA Coordinator's spam or junk mail folder, the request will be considered received one business day after the Academy or FOIA Coordinator first becomes aware of the written request.
- 3.4 Retention of FOIA Requests.** The Academy shall keep a copy of all the written requests for public records on file for no less than one year.
- 3.5 Request for Nonpaper Physical Media.** A person requesting public records may request that they be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. Such a request will be accommodated if the Academy has the technological capability necessary to provide records on the particular nonpaper physical media requested. The charge for

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such a request will include the actual and most reasonable economic cost of the nonpaper physical media required.

Section 4: Responses to FOIA Requests

4.1 Response Within Five Business Days. Unless otherwise agreed to in writing by the person making the request, the FOIA Coordinator or his/her designee shall respond to a request for a public record within five business days after the request is received by doing one of the following:

- a. Granting the request.
- b. Issuing a written notice to the requesting person denying the request.
- c. Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- d. Issuing a written notice extending for not more than 10 business days the period during which the public body shall respond to the request.

4.2 Provision of Webpage Address. In every response to a FOIA request, the Academy shall provide the specific webpage address(es) where the Academy's FOIA Policies and the written public summary are available for public viewing.

4.3 Failure to Timely Respond to Request. Failure to respond to a request pursuant to Section 4.1 constitutes the Academy's final determination to deny the request if either of the following applies:

- a. The failure was willful and intentional.
- b. The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference for this act,

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on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

4.4 Requested Records Available on Website.

- a. If the FOIA Coordinator or his/her designee knows or has reason to know that all or a portion of information requested in a written request is available on the Academy's website, the FOIA Coordinator or his/her designee will provide the specific webpage address where the information is available in its written response. The Academy will not charge a fee for records available to the public on its website, unless the requestor asks that the records be provided in another format other than through the publicly available website.
- b. If a *verbal* request for information is for information that the FOIA Coordinator or his/her designee believes is available on the Academy's website, the FOIA Coordinator or designee shall, where practicable and to the best of his/her knowledge, provide the requestor with the applicable webpage address.

4.5 Denial of Request. If a FOIA Coordinator or his/her designee denies a FOIA request, he/she must issue a written denial within the time period discussed in Section 4.1.

- a. The written denial shall contain:
 - i. An explanation of the basis under the FOIA 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.
 - ii. If all or part of a requested public record was determined exempt from disclosure under the FOIA, MCL 15.243, and therefore not disclosed pursuant

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to MCL 15.244, a description of that record or portion of a record that was separated and excluded.

- iii. A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the Academy, if that is the reason for denying the request or a portion of the request.
- iv. The procedures for appealing the denial, including a full explanation of the requesting person's right to seek judicial review of the denial, as discussed below in Section 4.7.
- v. Notice of the right to receive attorneys' fees and damages as provided by statute if, after judicial review, the court determines that the Academy has not complied with the statute and orders disclosure of all or a portion of a public record.
- b. The individual responsible for the denial of the request shall sign the written notice of denial.
- c. Should the requested record(s) be classified as exempt but contain information which is not exempt from disclosure, the FOIA Coordinator or his/her designee shall delete the exempt material and release the remaining information for inspection or copying.

4.6 Delays. If the FOIA Coordinator or his/her designee determines that additional time is required to access the requested record(s) or to make a determination on whether the request will be granted, the Coordinator shall, within five business days of receiving the request, give written notice to the requestor that the Academy has extended the period for responding to the request by 10 business days.

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- 4.7 Commence a Civil Action.** Upon the Academy's final determination to deny all or a portion of a FOIA request, the requesting person may commence a civil action in circuit court to compel the Academy's disclosure of the public records. An individual must initiate the civil action within 180 days of the Academy's final determination to deny the request.

Section 5: Original Records and Certified Copies

- 5.1 Original Records.** Original records are not permitted to leave the premises except as required by law or Academy policies.
- 5.2 Certified Copy of a Public Record.** A FOIA request may include a request for a certified copy of a public record.

Section 6: Fees and Billing

6.1 Fee Calculations. As permitted by MCL 15.234(1), the Academy shall charge a fee to cover the costs of responding to a FOIA request, except as provided in Section 6.2 below. The Academy's Standard Itemized Fee Form shall be used to determine the proper fee, which will be calculated by totaling the following costs:

- a. Labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request.
 - i. The Academy shall not charge a fee for such costs unless failure to charge a fee would result in unreasonably high costs to the Academy because of the nature of the request in the particular instance, and the Academy specifically identifies the nature of these unreasonably high costs.
 - ii. If a fee is charged in accordance with Section 6.1(a), the Academy shall not charge more than the hourly wage of the Academy's lowest-paid employee capable of searching for, locating, and examining the public records regardless of whether that person is available or who actually performs the labor.
 - iii. The Academy shall estimate and charge labor costs under Section 6.1(a) in increments of 15 minutes, with all partial time increments rounded down.
- b. Labor costs, including necessary review, associated with the separating and deleting of exempt information from nonexempt information.
 - i. The Academy shall not charge a fee for such costs unless failure to charge a fee would result in unreasonably high costs to the Academy because of the

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nature of the request in the particular instance, and the Academy specifically identifies the nature of these unreasonably high costs.

- ii. If a fee is charged in accordance with Section 6.1(b), the Academy shall not charge more than the hourly wage of the Academy's lowest-paid employee capable of separating and deleting exempt information from nonexempt information regardless of whether that person is available or who actually performs the labor.
- iii. The Academy shall estimate and charge labor costs under Section 6.1(a) in increments of 15 minutes, with all partial time increments rounded down.
- c. For public records provided to the requestor on nonpaper physical media, the actual and most reasonable economical cost of the computer discs, computer tapes, or other digital or similar media.
- d. For paper copies, \$0.10 per sheet of paper for copies made on 8½ by 11-inch paper or 8½ by 14-inch paper.¹
- e. Labor costs directly associated with duplication or publication, including making paper copies and digital copies.
 - i. The Academy shall not charge more than the hourly wage of the Academy's lowest-paid employee capable of necessary duplication nor publication, regardless of whether that person is available or who actually performs the labor.

¹ The statute, MCL 15.234(4), provides that a public body may not charge more than "the actual total incremental cost of necessary duplication or publication," "calculated as a total cost per sheet of paper." The fee cannot exceed \$0.10 per sheet of paper for copies made on 8½ by 11-inch paper or 8½ by 14-inch paper.

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- ii. Labor costs will be estimated and charged in time increments of the Academy's choosing; however, all partial time increments will be rounded down.
- f. Actual cost of mailing, by the least expensive form of postal delivery confirmation.
 - i. Unless the requestor stipulates to expedited shipping or insurance.

6.2 Fee Reductions.

a. Indigency.

- i. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by an individual who receives public assistance or proves indigence, provided:
 - 1. The individual submits an affidavit stating –
 - a. he/she is indigent and receiving specific public assistance, or, if not receiving public assistance, the individual states facts showing inability to pay the cost because of indigency;
 - b. his/her request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
 - 2. The individual has not previously received discounted copies of public records from the Academy, pursuant to this policy, two or more times in the same calendar year.

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- ii. If the requestor is ineligible for a discount based on indigency, the Academy shall inform the requestor of the specific reason for ineligibility in the Academy's written response to the individual's FOIA request.
- b. **Advocacy and Protection Organization.** A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319,² or their successors, if the request meets all of the following requirements:
 - i. It is made directly on behalf of the organization or its clients.
 - ii. It 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.
 - iii. It is accompanied by documentation of the organization(s)'s designation by the state, if requested by the public body.
- c. The fee reductions discussed in Section 6.2(a) and (b) shall be fully noted on the Academy's Standard Itemized Fee Form, which will be provided by the FOIA Coordinator in his/her response to an individual requesting records.
- d. The Academy shall keep a record of fees reduced for all individuals and organizations, though such fees will not be charged except those in excess of the yearly maximum.

² The Michigan Protection & Advocacy Service, Inc. currently serves both of these functions.

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- e. Revenue from fees paid for processing a FOIA request shall be deposited monthly in the general fund of the Academy.
- f. Section 6 does 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.

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Section 7: Deposits

- 7.1 Good Faith Deposit.** If the estimated cost for processing an individual's FOIA request exceeds \$50.00, the Academy shall require a good faith deposit of one-half of the estimated fee before processing the request.
- 7.2 Detailed Itemization Required.** The Academy's request for a deposit shall include a detailed itemization, provided on the Academy's Standard Itemized Fee Form, along with a best efforts estimate by the Academy regarding the time required for the Academy to provide the public records to the requestor.
- 7.3 Previous Failure to Pay.** If the Academy has granted and fulfilled a written request from an individual under the FOIA and has not been paid in full the total amount due pursuant to MCL 15.234(1), the Academy will require a deposit of up to 100% of the estimated fee before the Academy begins a full public record search for any subsequent written request from that individual, if all of the following apply:
- a. The final fee for the prior written request was not more than 105% of the estimated fee.
 - b. The public records made available contained the information being sought in the prior written request and the records are still in the Academy's possession.
 - c. The public records were made available to the individual, subject to payment, within the time frame estimate described above in Paragraph 2 and required under MCL 15.234(7).
 - d. 90 days have passed since the Academy 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 Academy.

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- f. The Academy calculates a detailed itemization, as required under MCL 15.234(4), that is the basis for the current written request's increased estimated fee deposit.

7.4 The Academy shall not require an increased estimated fee deposit from an individual as described above in Section 7.3 if any of the following apply:

- a. The individual is able to show proof of prior payment in full to the Academy.
- b. The Academy is subsequently paid in full for the applicable prior written request.
- c. 365 days have passed since the individual made the written request for which full payment was not remitted to the Academy.

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Section 8: Public Availability of Policies and Written Public Summary

8.1 The Academy shall make these FOIA policies (which include the Academy's Standard Itemized Fee Form) and the Academy's written public summary available to the public by:

- a. Posting the policies and public summary on the Academy's website;
- b. Providing free copies of the policies and public summary, upon request, to visitors to the Academy's office; and
- c. Including the specific webpage address(es) where the policies and written summary are available for public viewing in each Academy response to a written request for public records under the FOIA.