



**Candice S. Miller**

Public Works Commissioner  
Macomb County

## Public Summary of FOIA Procedures and Guidelines

It is the public policy of this state that all persons, except those incarcerated, 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 person shall be informed so that they fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act Public Act 442 of 1976, as amended ("FOIA"), the following is the written public summary of the Macomb Interceptor Drain Drainage District's (the "MIDDD") FOIA Procedures and Guidelines.

This is only a summary of the MIDDD's FOIA Procedures and Guidelines. For more details and information, copies of the MIDDD's FOIA Procedures and Guidelines are available at no charge at the offices of the MIDDD and on the MIDDD's website at: [publicworks.macombgov.org](http://publicworks.macombgov.org).

### 1. Submitting a FOIA Request to the MIDDD.

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the MIDDD must be submitted on any form of writing. A request must sufficiently describe a public record so as to enable the MIDDD to find it.
- No specific form to submit a written FOIA request is required.
- Written requests may be made in person by delivery to 21777 Dunham Road, Clinton Township MI 48036 or by mail addressed to Macomb Interceptor Drain Drainage

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District, ATTN: FOIA Coordinator, 21777 Dunham Road, Clinton Township MI 48036.

- Requests may also be made by facsimile to the MIDDD at 586-469-7693 or via email to [brian.baker@macombgov.org](mailto:brian.baker@macombgov.org).
- Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for public records under FOIA.

## 2. The MIDDD's Response to the FOIA Request

- Within five (5) business days of receipt of a FOIA request the MIDDD will issue a response. If a request is submitted by facsimile or e-mail the request is deemed to have been received on the following business day. E-mail requests delivered to the FOIA Coordinator's spam or junk-mail folder shall be deemed received one (1) day after the FOIA Coordinator becomes aware of the e-mail request, and such dates shall be noted in any response provided.
- The MIDDD will respond to your request in one of the following ways:
  - Grant the request;
  - Issue a written notice denying the request;
  - Grant the request in part and issue a written notice denying the request in part;
  - Issue a notice indicating that due to the nature of the request the MIDDD requires an additional ten (10) business days to respond; or
  - Issue a written notice indicating that the public record requested is available at no charge on the MIDDD's website.
- If a request is granted, or granted in part, the MIDDD will ask that payment be made for any permissible fees associated with responding to the request before the public record is made available. If the costs of processing and responding to the request are expected to exceed

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\$50.00 or if you have not paid for a previously granted request, the MIDDD will require a good faith deposit prior to processing the request. Under certain circumstances, the MIDDD may require payment of any and all fees in advance prior to processing the request.

### 3. Fee Deposit Requirements

- If the MIDDD has made a good faith calculation that the total fee for processing a FOIA request will exceed \$50.00, the MIDDD will require that you provide a deposit in the amount of 50% of the total estimated fee. A detailed itemization of the fee will be provided with the request for the deposit. The MIDDD's request for a deposit will also include a non-binding best efforts estimate of how long it will take to process the request upon receipt by the MIDDD of the required deposit.
- If the MIDDD receives a written request from an individual or entity who has not paid the MIDDD for fees charged in connection with a previously granted FOIA request, the MIDDD will require a deposit of 100% of the estimated fee prior to processing the request when **all** of the following conditions exist:
  - the final fee for the prior written request was not more than 105% of the estimated fee;
  - the public records made available contained the information sought in the prior written request and remain in the MIDDD's possession;
  - the public records were made available, subject to payment, within the time frame estimated by the MIDDD to provide the records;
  - 90 days have passed since the MIDDD notified the individual in writing that the records were available for pickup or mailing;
  - the individual is unable to show proof of prior payment to the MIDDD; and

- the MIDDD has calculated a detailed itemization that is the basis for the current written request's increased fee deposit.
- The MIDDD will not require the 100% estimated fee deposit if any of the following apply:
  - the person making the request is able to show proof of prior payment in full to the MIDDD;
  - the MIDDD is subsequently paid in full for all applicable prior written requests; or
  - 365 days have passed since the person made the request for which full payment was not remitted to the MIDDD.

#### 4. Calculation of FOIA Processing Fees

- A fee will not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless the failure to charge a fee would result in unreasonably high costs to the MIDDD because of the nature of the request in the particular instance, and the MIDDD identifies the nature of the high costs.
- In accordance with FOIA, the MIDDD may charge for the following six fee components when processing a FOIA request:
  - Labor costs associated with searching for, locating and examining a requested public record;
  - Labor costs associated with a review of a record to separate and delete exempt information from non-exempt information which is disclosed;
  - The costs of computer discs, computer tapes or other digital or similar media when the request asks for records in non-paper physical media
  - The cost of duplication or publication, not including labor, of paper copies of public records;

- Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet; and
- The actual cost of mailing or sending responsive public records to a requestor.
- Labor Costs
  - All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
  - Labor costs will be charged at the hourly wage of the lowest-paid employee capable of doing the work in the specific fee category, regardless of who actually performs work.
  - If the MIDDD does not employ a person capable of separating and deleting exempt from non-exempt information, contracted labor costs will be charged at an hourly rate not exceeding an amount equal to 6 times the state established minimum hourly wage rate.
  - Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The MIDDD 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.
  - Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Non-paper Physical Media
  - The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and



- if not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.
- A requestor is not eligible to receive the \$20.00 waiver if:
  - he/she has previously received discounted copies of public records from the MIDDD twice during that calendar year; or
  - he/she is requesting information on behalf of other persons who are offering or providing payment to the individual to make the request.
- The MIDDD will waive the fee for a nonprofit organization which meets all of the following conditions:
  - the organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act;
  - the request is made directly on behalf of the organization or its clients;
  - the request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
  - the request is accompanied by documentation of the organization's designation by the State.

## 6. Challenges or Appeals.

- Appeal of a Denial of a Public Record
  - Denials of all or a portion of a FOIA request may be appealed to the MIDDD Board. The appeal must be filed in writing, specifically state the word "appeal", and identify the reason or reasons for reversal of the denial.
  - Within 10 business days of receiving the appeal the MIDDD Board will respond in writing by:
    - Reversing the disclosure denial;



- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.
- Whether or not an appeal is submitted to the MIDDD Board, a civil action may be commenced in the Circuit Court within 180 days after the MIDDD's final determination to deny the FOIA request. If a requestor prevails in the civil action, the court will award reasonable attorneys' fees, costs and disbursements. If the court determined the MIDDD acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court will award the requestor damages in the amount of \$1,000.
- Appeal of an Excessive FOIA Processing Fee
  - If you believe that the fee charged by the MIDDD to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal of the fee charged to the MIDDD Board. The appeal must be in writing, specifically state the word "appeal", and identify the basis for contesting the fee charged.
  - Appeals received by the MIDDD Board are not considered received until the first regularly scheduled meeting of the MIDDD Board following submission of a written appeal.
  - Within 10 business days after receiving the appeal, the MIDDD Board will respond in writing by:
    - Waiving the fee;
    - Reducing the fee and issuing a written determination indicating the specific basis supporting the remaining fee;
    - Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or



- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the MIDDD Board will respond the written appeal.
- Within forty-five (45) days after receiving notice of the MIDDD Board's determination of the processing fee appeal, you may commence a civil action in the Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or an appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the MIDDD acted arbitrarily and capriciously by charging an excessive fee, the court may also award you punitive damages in the amount of \$500.

## Freedom of information Act procedures and guidelines

It is the policy of the Macomb Interceptor Drain Drainage District (the "MIDDD") that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act ("FOIA"), 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 person shall be informed so that they fully participate in the democratic process.

The MIDDD's policy with respect to FOIA requests is to comply with the State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The MIDDD acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The MIDDD acknowledges that sometimes it is necessary to invoke the exemptions identified under the FOIA in order to ensure

the effective operation of government and to protect the privacy of individuals.

The MIDDD will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The MIDDD's policy is to disclose public records consistent with and in compliance with State law.

The Macomb Interceptor Drain Drainage District Board ("MIDDD Board") has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the MIDDD and explaining how to understand the MIDDD's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

For the purposes of these Procedures and Guidelines, a member of the MIDDD Board is defined as the chairperson and any other member that make up the MIDDD.

## **SECTION 1: General administration**

1. The MIDDD Board acting pursuant to the authority at MCL 15.236, designates Candice S. Miller, Public Works Commissioner, as the FOIA Coordinator. The FOIA Coordinator shall be the individual responsible for processing all FOIA requests received by the MIDDD and approving all denials under the FOIA in consultation with the MIDDD's legal counsel. The FOIA Coordinator is authorized to designate other MIDDD staff to act on his or her behalf to accept and process written requests for the MIDDD's public records and approve denials.
2. The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these

Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

3. The FOIA Coordinator shall keep a copy of all written requests for public records received by the MIDDD on file for a period of at least one year.
4. The MIDDD is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other MIDDD staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.
5. The MIDDD will make these Procedures and Guidelines and the Written Public Summary publicly available without charge.
6. A copy of these Procedures and Guidelines and the MIDDD's Written Public Summary must be publicly available by providing free copies both in the MIDDD's response to a written request and upon request by visitors at the MIDDD Board's office.
7. These Procedures and Guidelines and the MIDDD's Written Public Summary will be maintained on the MIDDD's website at: [publicworks.macombgov.org](http://publicworks.macombgov.org). A link to those documents will be provided in lieu of providing paper copies of those documents.

## Section 2: FOIA Requests

1. A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the MIDDD must do so in writing. The request must sufficiently describe a public record so as to enable MIDDD personnel to identify and find the requested public record. No specific form to submit a request for a public record is required.
2. Written requests for public records may be submitted to the MIDDD in person or by mail to the FOIA Coordinator or any member of the MIDDD Board. Requests may also be submitted electronically by facsimile and e-mail. Requests that are

received by a MIDDD board member 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 other otherwise provided to him or her in lieu of paper copies. The MIDDD 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 serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **SECTION 3: Processing a foia request**

1. Responding to the FOIA Request
  1. Within 5 business days of receipt of a FOIA request the MIDDD will issue a response, unless otherwise agreed to in writing by the person making the request. The MIDDD will respond to the request in one of the following ways:
    - Granting the request;
    - Issuing a written notice denying the request;
    - Granting the request in part and issue a written notice denying in part the request;
    - Issuing a notice indicating that due to the nature of the request the MIDDD needs an additional 10 business days to respond (only one such extension is permitted); or

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- Issuing a written notice indicating that the public record requested is available at no charge on the MIDDD'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. A copy of these Procedures and Guidelines will be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the MIDDD's website, then a website link to those documents may be provided in lieu of providing paper copies.
  3. If the cost of processing a FOIA request is \$50.00 or less, the requestor will be notified of the amount due and where the documents can be obtained.
  4. If the estimated cost of processing a FOIA request is expected to exceed \$50.00, or if the requestor has not fully paid for a previously granted request, the MIDDD 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 requestor with a detailed itemization of the allowable costs estimated to be incurred by the MIDDD to process the request and also provide a best effort estimate of a time frame it will take the MIDDD to provide the records to the requestor upon receipt of the required deposit. The best efforts estimate shall be nonbinding on the MIDDD but will be made in good faith with reasonable accuracy, 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.

5. The MIDDD 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 MIDDD records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal business operations of the MIDDD.
  6. The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record to the person requesting the public record.
2. Denial of FOIA Request
1. If the request is denied or denied in part, the FOIA Coordinator will sign and issue a written Notice of Denial which shall provide, as applicable:
    - An explanation why a requested public record is exempt from disclosure; or
    - A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the MIDDD; or
    - An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
    - An explanation of the person's right to submit an appeal of the denial to either the MIDDD Board or seek judicial review in the Circuit Court; and
    - 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 requestor prevail in Circuit Court.
  2. If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial, indicate that the request is deficient, and 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.

#### Section 4: deposit requirements

1. If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the FOIA Coordinator, the requestor 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 MIDDD 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:
  1. the final fee for the prior written request is not more than 105% of the estimated fee;
  2. the public records made available contained the information sought in the prior written request and remain in the MIDDD's possession;
  3. the public records were made available to the individual, subject to payment, within the time frame estimated by the MIDDD to provide the records;
  4. 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
  5. the individual is unable to show proof of prior payment to the MIDDD; and
  6. 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:

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1. the person making the request is able to show proof of prior payment in full to the MIDDD;
2. the MIDDD is subsequently paid in full for the applicable prior written request; or
3. 365 days have passed since the person made the written request for which full payment was not remitted to the MIDDD.

## Section 5: Calculation of fees

1. A fee may be charged for the labor cost of copying/duplication.
2. A fee will **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 MIDDD because of the nature of the request in the particular instance.
3. The following factors shall be used to determine an unreasonably high cost to the MIDDD:
  1. The particular request incurs costs greater than incurred from the typical or usual request received by the MIDDD.
  2. Volume of the public record requested.
  3. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
  4. The available staffing to respond to the request.
  5. Any other similar factors identified by the FOIA Coordinator in responding to the particular request.
4. The MIDDD may charge for the following costs associated with processing a FOIA request:
  1. Labor costs directly associated with searching for, locating and examining a requested public record.
  2. Labor costs associated with a review of a record to separate and delete information exempt from disclosure from information which is disclosed, when failure to charge a fee will result in unreasonably high costs to the MIDDD.

3. The actual cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media.
  4. The cost of duplication or publication, not including labor, of paper copies of public records.
  5. 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.
  6. The actual cost of mailing or sending a public record.
5. Labor costs will be calculated based on the following requirements:
1. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
  2. 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.
  3. Labor costs will be charged at the hourly wage of the lowest-paid MIDDD employee capable of doing the work in the specific fee category, regardless of who actually performs work.
  4. 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 the person or firm who does the work and the labor cost may not exceed an amount 6 times the state minimum hourly wage.
  5. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The MIDDD 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.

6. Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
6. The cost to provide records on non-paper physical media when so requested will be based on the following requirements:
  1. 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.
  2. This cost will only be assessed if the MIDDD has the technological capability necessary to provide the public record in the requested non-paper physical media format.
  3. In order to ensure the integrity and security of the MIDDD's technological infrastructure, the MIDDD will procure any requested non-paper media and will not accept non-paper media from the requestor.
7. The cost to provide paper copies of records will be based on the following requirements:
  1. 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.
  2. The MIDDD may provide records using double-sided printing, if it is cost-saving and available.
8. The cost to mail records to a requestor will be based on the following requirements:
  1. The actual cost to mail public records using a reasonably economical and justified means.
  2. The MIDDD shall charge for the least expensive form of postal delivery confirmation.
  3. No cost will be made for expedited shipping or insurance unless requested.
9. If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

1. Reduce the labor costs by 5% for each day the MIDDD exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
  - The late response was willful and intentional.
  - 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.
  - The written request specifically 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.
2. Fully note the charge reduction in the Detailed Itemization of Costs Form.

## Section 6: Discount 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:
  1. indigent and receiving specific public assistance; or
  2. 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:
  1. the requestor has previously received discounted copies of public records from the MIDDD twice during the calendar year; or
  2. the requestor requests information in connection with other persons who are offering or providing payment to make the request.
3. The MIDDD will waive the fee for a nonprofit organization designated by the State 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

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Individuals with Mental Illness Act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

1. is made directly on behalf of the organization or its clients;
2. 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
3. is accompanied by documentation of its designation by the State, if requested by the MIDDD.

### **Section 7: Appeal of a Denial of a public record**

1. When a requestor 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 with the MIDDD Board. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.
2. The MIDDD Board is not considered to have received a written appeal until the first regularly scheduled meeting following the submission of the appeal.
3. Within 10 business days of receiving the appeal the MIDDD Board will respond in writing in one of the following ways:
  1. Reverse the disclosure denial
  2. Uphold the disclosure denial
  3. Reverse the disclosure denial in part and uphold the disclosure denial in part; or
  4. 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 requestor submitted an appeal of a denial to the MIDDD Board, he or she may file a civil action in the Circuit Court within 180 days after the MIDDD's final determination to deny the request.
5. If the court determines that the public record is not exempt from disclosure, the court will award the requestor reasonable

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attorneys' fees, costs and disbursements. If the court determines that the appellant prevails only in part, the court, in its discretion, may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

6. If the court determines that the MIDDD arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall order the MIDDD to pay a civil fine of \$1,000, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000 to the person seeking the right to inspect or receive a copy of the public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

### **Section 8: Appeal of an excessive foia processing fee**

1. If a requestor believes that the fee charged by the MIDDD 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 MIDDD Board. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.
2. The MIDDD Board is not considered to have received a written appeal until the first regularly scheduled meeting following the submission of the appeal.
3. Within 10 business days after receiving the appeal, the MIDDD Board will respond in writing by:
  1. waiving the fee;
  2. reducing the fee with a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the MIDDD Board that the statements in the determination are accurate and the

- reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
3. 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 MIDDD Board that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
  4. issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the MIDDD Board will respond to the written appeal.
4. Within 45 days after receiving notice of the MIDDD Board's determination of a fee appeal, a requestor may commence a civil action in the Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the MIDDD is not obligated to complete the processing of the request for the public record at issue until the Court resolves the fee dispute.
  5. If the court determines that the MIDDD required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the requesting person in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award, in its discretion, all or an appropriate amount of reasonable attorneys' fees, costs and disbursements.
  6. If the court determines that the MIDDD has acted arbitrarily and capriciously by charging an excessive fee, it shall order the MIDDD to pay a civil fine of \$500, which shall be deposited into the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500 to the person seeking the fee reduction. The fines and damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.



## SECTION 9: Conflict with Prior FOIA Policies and Procedures; Effective Date

1. To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the MIDDD Board, these Procedures and Guidelines shall supersede all prior policies and shall control. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of these Procedures and Guidelines is found to be in conflict with any previous policy promulgated by the MIDDD Board, the administrative rule promulgated by the FOIA Coordinator is controlling.
2. To the extent that any provision of these Procedures and Guidelines 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. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the MIDDD Board, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the MIDDD Board of any change to these Policies and Guidelines
3. These FOIA Procedures and Guidelines become effective July 1, 2015.