



POLICY G2026-05-25

FREEDOM OF INFORMATION ACT (FOIA)

CITY OF BUCHANAN COUNTY OF BERRIEN STATE OF MICHIGAN

Preamble: Statement of Principles

It is the policy of the City of Buchanan that all persons, except those who are serving a sentence of imprisonment, 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 people shall be informed so that they fully participate in the democratic process.

The City of Buchanan'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 even-handed manner regardless of who makes such a request.

The City of Buchanan acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of Buchanan acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals. The City of Buchanan will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of Buchanan's policy is to disclose public records consistent with and in compliance with State law.

Section 1. General Policy

The City Commission acting pursuant to the authority at MCL 15.236 designates the City Clerk as the City's FOIA Coordinator. He or she is authorized to designate other

City staff to act on his or her behalf to accept and process FOIA requests for the City's public records and approve denials.

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 City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log 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.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The City 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 City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The City Clerk (FOIA Coordinator) shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by City of Buchanan must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available a FOIA Request Form for use by the public. Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by facsimile and e-mail. Upon receipt, requests for public records shall be promptly forwarded to the FOIA

Coordinator for processing. 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 City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City of Buchanan on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

Any public records available to the general public on the City's website at the time a request is made are exempt from any charges. If the FOIA Coordinator knows or has reason to know that all or a portion of requested information is available on the City's website, the FOIA Coordinator shall notify the requestor in its written response that all or a portion of the requested information is available on the website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On any detailed cost itemization, the FOIA Coordinator shall separate the requested public records that are available on the website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on the City's website. If the FOIA Coordinator has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, the FOIA Coordinator shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation under FOIA, not to exceed the actual costs of providing the information in the specified format. The FOIA Coordinator may provide requested information available in public records without receipt of a written request. If a verbal request for information is for information that the FOIA Coordinator believes is available on the City's website, the FOIA Coordinator will, where practicable and to the best of his or her knowledge, inform the requestor about the City's pertinent website address.

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 Request

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The City will respond to the 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 in part the request;
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond. Only one such extension is permitted;
- Issue a written notice indicating that the public record requested is available at no charge on the City's website;
- Issue a notice requiring a deposit before the request will be processed, if the estimated fee exceeds \$50.00; or
- Request clarification.

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.

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.

If based on a good faith calculation by the City, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the City 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 City to process the request and

also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, 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 City's policy.

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to 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 City;
- 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 Buchanan City Manager or seek judicial review in the Berrien County 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 \$1,000, should they prevail in Circuit Court.

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 described in this Section.

The City 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 City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the City, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the City 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:

- The final fee for the prior written request is 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 City's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the City; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased 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 City;
- The City is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the City.

Section 5: Calculation of 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 failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual request received by the City.
- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one City department or various City offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- 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.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- 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 City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City 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 until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- If the City does not employ a person capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in FOIA, the FOIA Coordinator on a case-by-case basis, shall treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs when calculating charges and clearly note the name of the contracted person or firm on the detailed itemization. Total labor costs calculated for contracted labor costs will not exceed an amount equal to 6 times the state minimum hourly wage rate determined under section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934.

The cost to provide records on non-paper physical media, when so requested, will be based on the following requirements:

- 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.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- 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.
- The City may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the City 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 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.
- Fully note the charge reduction in the Detailed Itemization of Costs Form

Section 6: Waiver of Fees

The costs of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the

public interest because such can be considered as primarily benefiting the general public.

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:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the City twice during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:

- Is made directly on behalf of the organization or its clients;
- 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;
- Is accompanied by documentation of its designation by the State.

Section 7: Appeal of a Denial of a Public Record

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 Buchanan City Manager. 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.

Within 10 business days of receiving the appeal the City Manager 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.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the City Manager may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

Whether or not a requestor submitted an appeal of a denial to the Buchanan City Manager, he or she may file a civil action in Berrien County Circuit Court within 180 days after the City's final determination to deny the request.

In a Circuit Court action commenced under the above, if the Court that determines a public record is not exempt from disclosure it may order the City to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The Court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the Court may be punished as contempt of Court. An action commenced under the above and an appeal from an action commenced under the above shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the Court may award reasonable attorneys' fees, costs, and disbursements. If the person appealing or the City prevails in part, the Court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the Court determines in an action commenced under this section that the City has arbitrarily and capriciously violated FOIA by refusal or delay in disclosing or providing copies of a public record, the Court may order the City to pay a civil fine of \$1,000.00, 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 \$1,000.00 to

the person seeking the right to inspect or receive a copy of a 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. If the court determines that the City arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000. Court shall also order that the City pay a civil fine of \$1000 to the general Fund of the State Treasury.

Section 8: Appeal of an Excessive FOIA Processing Fee

- 1) If a requestor believes that the City requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or under Section 4 of the FOIA, the requestor may do any of the following:
 - a) May submit to the City Manager a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or Section 4 of the FOIA.
 - b) Commence a civil action in the Berrien County Circuit Court for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the City Manager. If a civil action is commenced against the City under this subdivision, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. A Circuit Court action cannot be filed under FOIA, unless 1 of the following applies:
 - i) The City does not provide for appeals to the City Manager.
 - ii) The City Manager failed to respond to a written appeal as required above.
 - iii) The City Manager body issued a determination to a written appeal as required above.
- 2) Within 10 business days after receiving a written appeal, the City Manager shall do 1 of the following:
 - a) Waive the fee.

- b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 of FOIA that supports the remaining fee. The determination shall include a certification from the City Manager that the statements in the determination are accurate and that the reduced fee amount complies with the City's publicly available procedures and guidelines and section 4 of FOIA.
 - c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 of FOIA that supports the required fee. The determination shall include a certification from the City Manager that the statements in the determination are accurate and that the fee amount complies with the City's publicly available procedures and guidelines and section 4 of FOIA.
 - d) Issue a notice extending for not more than 10 business days the period during which the City Manager must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The City Manager shall not issue more than 1 notice of extension for a particular written appeal.
- 3) In an action commenced under FOIA, a court that determines the City required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 of FOIA shall reduce the fee to a permissible amount. Venue for an action against the City is proper in the Berrien County Circuit Court for the county in which the public record or an office of the City is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4 of FOIA. Failure to comply with an order of the court may be punished as contempt of court.
- 4) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- 5) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the City liable for damages.

- 6) If the court determines in an action commenced under this section that the City has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the City to pay a civil fine of \$500.00, which shall be deposited in 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 \$500.00 to the person seeking the fee reduction. The fine and any 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.
- 7) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4 of FOIA, including any deposit.

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

To the extent that these Procedures and Guidelines conflict with previous FOIA policies adopted by City Commission, these Procedures and Guidelines are controlling.

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 City Commission, 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 City Commission of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines are effective May 26, 2026.

Approved by City Commission: May 26, 2026