

Title: Freedom of Information Act Procedures, Guidelines and Written Public Summary

I. GUIDELINES

A. PURPOSE

Oakland Community College (College) is a public body required by law to provide public records to persons requesting public records unless those records are exempt from public disclosure by the Freedom of Information Act (FOIA) or some other statute.

The policy contained in this transmittal is intended to ensure uniformity of practice and procedures in the release of public records and in the fees charged for the cost of processing a request for public records.

B. REVISION HISTORY

Rescinds and replaces the College’s Freedom of Information Act Guidelines and Procedures, effective May 1, 2014.

C. SCOPE

To provide a request process and response procedure for Freedom of Information Act (FOIA) requests.

D. DEFINITIONS:

Fees means the amount the College charges to a FOIA requestor in order to process the FOIA request.

FOIA Coordinator means the person designated by the Chancellor with the primary responsibility to accept and process requests for public records.

FOIA Request means a written request submitted to the College that sufficiently describes a public record.

Person means 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 correctional facility in this state or any other state, or in a federal correctional facility.

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. Public record does not include computer software. The FOIA separates public records into the following 2 classes:

- (i) Those that are exempt from disclosure under Section 13.
- (ii) All public records that are not exempt from disclosure under Section 13 and which are subject to disclosure under the FOIA.

Requestor means the person (see definition of person) making the request for documents under the FOIA.

Writing means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drum, or other means of recording or retaining meaningful content. A writing is also information contained in a database or electronic records.

GENERAL INFORMATION:

1. A public record that is a writing prepared, owned, used, in the possession of, or retained by the College in the performance of an official function is subject to FOIA, for which a disclosure determination is made by the FOIA Coordinator. A public record does not include computer software.
2. FOIA requests may be submitted in person or via mail, facsimile machine or electronic mail. Except as set forth in paragraph 3, any written request for a document shall be considered a FOIA request, regardless of whether the FOIA is mentioned.
3. The following types of FOIA requests shall be forwarded to the official designated below for the proper processing:
 - a. A request from a governmental agency, including a court, which is entitled by law to receive the information or documents requested shall be referred to the Vice Chancellor for Human Resources or his/her designee.
 - b. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents) shall be referred to the Vice Chancellor for Human Resources or his/her designee, who shall refer the request to the College's legal counsel.
 - c. A request from a private or governmental agency for employee personnel information which the employee has authorized to be released (e.g., employment verification to a lending institution or prospective employer) shall be referred to the College's Human Resources office.

- d. A request from an employee to inspect his/her personnel or medical files, or to receive one copy of the documents in those files shall be referred to the College's Human Resources office.
- e. A request from a collective bargaining unit, pursuant to its contract, for documents related to a disciplinary matter or otherwise for information pursuant to the Public Employment Relations Act (PERA) shall be referred to the College's Human Resources office.
- f. Documents required to be produced by a subpoena or other court order shall be referred to the Vice Chancellor for Human Resources or his/her designee.
- g. A request from a news media representative shall be copied to the Chancellor's office.
- h. A request from a law enforcement agency shall be referred to the Vice Chancellor for Human Resources or his/her designee.

COLLEGE FOIA COORDINATOR:

4. Pursuant to Section 6 of the FOIA, the FOIA Coordinator for the College shall be the Chancellor or designee thereof.

The FOIA Coordinator is responsible for the following:

- All FOIA requests received by the College.
 - Responding to all questions concerning FOIA requests.
5. All persons designated to process FOIA requests shall comply with the following:
 - Maintain a copy of all FOIA requests received and all completed Responses to Request for Public Records. These documents shall be retained in accordance with the College's Retention and Disposal Schedule, but for no less than one year, in accordance with Section 3(2) of the FOIA.

FEES:

1. Under certain circumstances, the College may charge a fee to process a FOIA Request. A fee will not be charged for the cost of search, examination, review, and redaction unless failure to charge a fee would result in unreasonably high costs to the College because of the nature of the request in the particular instance.
2. A requestor shall not be charged for the first \$20.00 of a FOIA fee where (a) a requestor has submitted an affidavit verifying that he/she is indigent and receiving public assistance or sufficiently stating facts showing an inability to pay the cost due to indigence, or (b) the requestor is formally designated 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 of Advocacy for Individuals with Mental Illness Act, the request is made directly on behalf of such a requestor or its clients,

is made for a reason wholly consistent with the mission and provision of Section 931 of the Mental Health Code and is accompanied by documentation of its designation by the State if requested by the College. Questions concerning the waiver of fees should be directed to the FOIA Coordinator.

3. In cases where a fee will be charged, the College's response will state the amount assessed and indicate that the documents will be provided after payment is received in full. If the amount assessed will exceed \$50.00, exclusive of any waived amounts, a 50 percent deposit may be required before processing of the request begins. Upon completion of processing, the balance must be paid before the documents are delivered to the requestor.
4. The College may include charges for the following when calculating the estimated and/or actual fee:
 - a. Category A: Labor costs directly associated with the necessary searching for, locating, and examining of public records.
 - Will not exceed the hourly wage of the lowest paid employee capable of performing the task. Itemize hourly wage and number of hours.
 - Will be calculated in increments of 15 minutes or more, with partial time rounded down.
 - May include up to 50% of the applicable labor charge for fringe benefits.
 - Will not include overtime unless stipulated by requestor.
 - b. Category B: Labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information.
 - If performed by a College employee, these labor costs will not exceed the hourly wage of the lowest paid employee capable of performing the tasks.
 - Will include the name of the contracted laborer or firm performing Category B labor if Category B labor costs are incurred through contracting with a third party to perform the labor. Contracted labor may not exceed 6 times the State minimum wage.
 - Will be charged in 15 minute increments or more, with partial time rounded down.
 - May include up to 50% of the applicable labor charge for fringe benefits. Itemization must note percentage multiplier used.
 - Will not include overtime unless stipulated by requestor.
 - c. Category C: (for public records provided on nonpaper physical media) Actual and most reasonably economical cost of the computer disks, computer tapes, or other digital or similar media.
 - The requestor may stipulate that the records will be on non-paper physical media, emailed, or otherwise electronically provided.
 - Only applies if the College has the technological capability necessary to provide records in the requested electronic format.
 - d. Category D: (for paper copies of public records) Actual total incremental cost of necessary duplication or publication, not including labor.

- The College will only charge a maximum of \$0.10 per sheet for 8 ½ by 11 inch or 8 ½ by 14 inch paper and will only charge the actual cost of all other types of paper.
 - The College will use the most economical means available, including double-sided printing.
- e. Category E: Labor costs directly as with duplication or publication, including making paper copies, making digital copies, or transferring digital public records.
- Will not exceed the hourly wage of the lowest paid employee capable of performing the task.
 - Will be charged in 15 minute increments or more, with partial time rounded down.
 - May add up to 50% of the applicable labor charge for fringe benefits.
 - Will not include overtime wages unless stipulated to by requestor.
- f. Category F: Actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner.
- May only charge for expedited shipping or insurance if stipulated by the requesting person.
 - May charge for the least expensive form of postal delivery confirmation.

FEE DEPOSITS:

1. If a fee will exceed \$50.00, exclusive of any waived amounts, a 50 percent deposit may be required before processing of the request begins. Upon completion of processing, the balance must be paid before the documents are delivered to the requestor.
2. If a deposit is required, the College will also include a non-binding, best efforts estimate regarding the time frame it will take the College to provide the public records to the requestor.
3. The College may require a deposit of 100% from a requestor who has not paid a previous FOIA fee in full to the College before the College begins another search for that requestor. The College will only require this 100% deposit if all of the following apply:
 - a. The previous final fee was not more than 105% of estimated fee.
 - b. Records made available contained the information being sought in prior request and are still in the College's possession.
 - c. Public Records were made available to the requestor subject to payment within the time frame estimate.
 - d. Ninety (90) days have passed since written notification to the requestor that the records were available.
 - e. The requestor is unable to show proof of prior payment to the College.
4. The College will no longer require an increased deposit due to failure to pay if any of the following apply:
 - a. The requestor can show proof of prior payment in full.

- b. The College is subsequently paid in full.
- c. Three hundred sixty-five (365) days have passed since the requestor made the written request for which full payment was not remitted.

II. **PROCEDURE:**

- 5. A FOIA request received by a College employee shall be immediately forwarded by fax transmittal, email (including scanned copy of request) or hand delivery to the FOIA Coordinator. The FOIA Coordinator shall respond to the request within five business days after the College received the request using the Response to Request for Public Records – FOIA form. If additional explanation for non-disclosure on the basis of FOIA or another statute is needed, an attachment may accompany the response form (OCC132).
 - a. A FOIA Request received by the College via facsimile or electronic mail shall be considered received by the College on the business day following the date of transmission.
 - b. A FOIA Request sent via electronic mail and delivered to a College spam or junk mail folder is not considered received by the College until one day after the College first becomes aware of the request. The College must note in its records both the time a FOIA Request is delivered to its spam or junk mail folder and the time the College first becomes aware of the FOIA Request.
- 6. A ten-business day extension may be taken by the FOIA Coordinator if necessary, using the Response to Request for Public Records – FOIA. The extension must notify the requestor that the ten-business day extension is being taken and the new date for response.
- 7. The College's failure to respond constitutes a denial if either of the following circumstances exist:
 - a. The College's failure to respond was willful and intentional.
 - b. The FOIA Request included language requesting information within the first 250 words of the body of correspondence or the front of the envelope or subject line of the email, letter, or fax including any of the following words, characters or abbreviations, or recognizable misspellings: "Freedom of Information", "Information", "FOIA", "Copy", or statutory reference to FOIA.
- 8. The FOIA Coordinator shall review the request and determine whether the College possesses nonexempt records responsive to the request. The College shall provide existing, nonexempt public records under the name given by the requestor or by another name reasonably known to the College. The FOIA does not require the College to make a compilation, summary or report or information, nor does it require the College to create a new public record.

The extraction of certain fields within a database is acceptable and does not constitute the creation of a new record. However, if other fields of the database are exempt under the FOIA, those fields will need to be redacted (blacked out) or removed from the record with the proper exemption being applied. Contact the FOIA Coordinator for questions in this area.

9. The FOIA Coordinator shall be responsible for obtaining the requested documents that are public records and are in the College's possession. If the College does not have the document requested, the FOIA Coordinator is not required to obtain it from outside the College, including from another agency or an entity under contract with the College, in order to comply with the request.
10. The FOIA Coordinator shall carefully review the documents obtained to ensure information and documents exempt from disclosure are not provided. Only those exemptions set forth in the FOIA, which are listed on the back of the Response to Request for Public Records – FOIA form OCC132, shall be used. If more than one exemption applies to a particular request, all relevant exemptions shall be indicated on the form when responding to a FOIA request. An explanation as to what was exempted shall be stated on the form.
11. If only a portion of a document is exempt, the exempt portion shall be redacted and/or the nonexempt portion of the document shall be disclosed. The FOIA Coordinator shall ensure exempt portions of the document are not legible on the copy provided.

EXEMPTIONS UNDER FOIA:

12. The exemptions allowed by the FOIA are expressed in general language, which must be applied to the specific document requested. It is impossible to list all exempt information or documents; therefore, the FOIA Coordinator must be familiar with all exemptions listed on the back of the Response to Request for Public Records – FOIA form (OCC132). The following are some of the exemptions which are most frequently used and examples of the items to which the exemptions may apply:
 - a. Clearly unwarranted invasion of an individual's privacy. Exemption 13(1)(a).
Examples – Home addresses and home telephone numbers, personal cellular phone numbers.
 - b. Information which is preliminary to a final agency decision unless it is purely factual and the public interest warrants disclosure. Exemption 13(1)(m).
Examples – Interview notes, internal affairs, harassment and sexual harassment investigations prior to completion. (Note: Portions or all of an investigation may be exempt after completion for other reasons, e.g., privacy or security concerns.)
 - c. The FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. Exemption 13(1)(d).
Examples – Documents and/or information protected under the Mental Health Code.
 - d. The home addresses, home telephone numbers, and other information contained within the personnel files of the College employee, unless the requestor is the

employee. However, the employee's name, age (not date of birth), past and present positions with the College and length of service in a position shall be provided to any requestor. For purposes of this exemption, personnel files include medical and expunging files maintained on an employee.

- e. Information which is subject to a specific privilege (e.g., attorney-client, doctor-patient, psychologist-patient), except if the requestor has a signed release from the client or patient that is Health Insurance Portability and Accountability Act compliant. Exemption 13(1)(g) & (h).
- f. Information or records that would disclose the Social Security number of any individual. Exemption 13(1)(w).
- g. Information or records relating to a civil court action in which the requesting party and the College are parties.

INSPECTION:

- 13. The FOIA also requires that at the request of the person making the request, a reasonable opportunity for inspection on nonexempt public documents shall be allowed during normal business hours. The FOIA Coordinator must remove exempt material prior to the inspection. There is no charge for inspection of documents, although a fee will be charged if it is necessary to make a copy of a document in order to delete a portion that is exempt. There may be a charge to supervise the inspection of records.

APPEAL:

- 14. A requestor whose request has been denied in full or in part, or who believes the fee the College has required exceeds the amount permitted by law, may appeal the denial or fee to the Chancellor. The appeal shall state the word "appeal" and identify the reasons why the denial should be reversed or why the fee is excessive, as the case may be. Within 10 business days after receipt of the appeal: (1) the Chancellor may reverse the initial denial determination or uphold the initial denial determination or a combination thereof; and/or (2) the Chancellor may waive, reduce or uphold the fee or issue a notice extending the College's response time up to 10 business days and provide the reason why such an extension is necessary. In upholding or reducing a fee, the Chancellor must provide a written determination providing the basis for the fee amount and will certify that the statements the written determination are accurate and that the fee complies with the College's FOIA procedure and guidelines and FOIA itself.
- 15. A requestor whose request has been denied in full or in part, or who believes the fee the College has required exceed the amount permitted by law, may also file an action in circuit court. Such filing must be within 180 days after the date of the final determination to deny the request or within 45 days after receiving a notice of required fees or a determination of an appeal to the Chancellor. If the requestor prevails in such an action, the court may reduce the fee and/or award reasonable

attorney fees, costs, and disbursements. Further, if the court finds the College's determination to be arbitrary and capricious, the requestor may receive punitive damages of \$1,000.00 related to a denial or \$500.00 related to an excessive fee. If a court finds the College acted willfully, intentionally or in bad faith, the College may be ordered to pay a civil fine of \$2,500.00 to \$7,500.00.

III. Written Public Summary of Oakland Community College's Procedures and Guidelines pursuant to the Freedom of Information Act

The Freedom of Information Act (which is referred to as "FOIA" in this summary) governs public records that are writings which are prepared, owned, used, in the possession of, or retained by the College in the performance of its official functions. If a person requests in writing that the College provide public records to that person, FOIA requires that the College provide those public records to the person, subject to certain exceptions and requirements.

There are certain types of information that FOIA exempts from disclosure and thus the College does not have to provide to a person in response to a FOIA request. Examples of exempt information include information subject to the attorney-client privilege, social security numbers and details related to current College security procedures. The College may deny a person's FOIA request and not provide the records if FOIA provides that information requested falls within an exemption. The College may also charge a fee to process a FOIA request and require a person to pay a deposit in order for the College to process a FOIA request. Finally, if the requestor doesn't agree with the College's decision to deny his or her FOIA request, or if the requestor disagrees with the fee the College will charge, the requestor can challenge the College's decision.

The following summary is meant to explain the College's FOIA procedures and guidelines so that the public can better understand (i) how to submit a FOIA request to the College, (ii) the College's response to a FOIA request, (iii) the College's fee calculations, (iv) the College's deposit requirements and (v) the avenues for challenging the College's response to a FOIA request.

A. How to Submit a Written Freedom of Information Act Request to OCC

A FOIA request must be submitted in writing to the College. A person may submit a FOIA request to the College in person, via mail, via facsimile, or via electronic mail. In most cases, any written request for a document will be considered a FOIA request, regardless of whether the FOIA is mentioned. The most direct way for a person to submit a written FOIA request is to submit the request to the College's FOIA coordinator:

Oakland Community College
Attention: FOIA Coordinator
2480 Opdyke Rd.
Bloomfield Hills, MI 48304
Fax: (248) 341-2105
Email: foia@oaklandcc.edu

B. The College's Response to a FOIA Request

FOIA requires that the College respond to a FOIA request within five business days after the College received the request. The College may take a ten-business day extension to respond to a FOIA request, but it must send the requestor notification of the extension within the first five day period.

The College will review a FOIA request and determine whether the College possesses records responsive to the request. Importantly, the FOIA does not require the College to make a compilation, summary or report of information nor does it require the College to create a new public record. Also, if the College does not have the document requested, the College is not required to obtain it from outside the College, including from another agency or an entity under contract with the College.

If the College possesses responsive records, the College will carefully review those records to ensure information and documents exempt from disclosure are not provided. (As a reminder, FOIA lists certain information that is exempt from disclosure). If more than one exemption applies to a particular request, the College will explain the reason for all the applicable exemptions when responding to a FOIA request. If only a portion of a document is exempt, the College will redact the exempt portion and the nonexempt portion of the document will be provided.

C. The College's Fee Calculations

Under certain circumstances, the College may charge a fee to process a FOIA Request. A person is not charged for the first \$20.00 of a FOIA fee where (a) a requestor has submitted an affidavit verifying that he/she is indigent and receiving public assistance or sufficiently stating facts showing an inability to pay the cost due to indigence, or (b) the requestor is formally designated 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 of Advocacy for Individuals with Mental Illness Act, the request is made directly on behalf of such a requestor or its clients, is made for a reason wholly consistent with the mission and provision of Section 931 of the Mental Health Code and is accompanied by documentation of its designation by the State if requested by the College. Questions concerning the waiver of fees should be directed to the FOIA Coordinator.

In cases where a fee will be charged, the College's response will state the amount assessed and indicate that the documents will be provided after payment is received in full. If the amount assessed will exceed \$50.00, exclusive of any waived amounts, a 50 percent deposit may be required before processing of the request begins. Upon completion of processing, the balance must be paid before the documents are delivered to the requestor.

The College may include charges for the following when calculating the estimated and/or actual fee:

- 1. Labor costs directly associated with the necessary searching for, locating, and examining of public records.** This portion of a fee will not exceed the hourly wage of the lowest paid employee capable of performing the task. It will be calculated in increments of 15 minutes or more, with partial time rounded down and may include up to 50% of the applicable labor charge for fringe benefits. It will not include overtime unless requestor agrees.
- 2. Labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information.** If performed by a College employee, these labor costs will not exceed the hourly wage of the lowest paid employee capable of performing the tasks. If these labor costs are incurred through contracting with a third party to perform the labor the name of the contracted laborer or firm performing labor will be provided.

Contracted labor may not exceed 6 times the State minimum wage. It will be charged in 15 minute increments or more, with partial time rounded down and may include up to 50% of the applicable labor charge for fringe benefits. It will not include overtime unless the requestor agrees.

3. **Actual and most reasonably economical cost of the computer disks, computer tapes, or other digital or similar media.** This portion of the fee is only applicable for public records provided on nonpaper physical media. The requestor may agree that the records will be on non-paper physical media, emailed, or otherwise electronically provided. Also, it only applies if the College has the technological capability necessary to provide records in the requested electronic format.
4. **Actual total incremental cost of necessary duplication or publication, not including labor.** This portion of the fee is only applicable for paper copies of public records. The College will only charge a maximum of \$0.10 per sheet for 8 ½ by 11 inch or 8 ½ by 14 inch paper and will only charge the actual cost of all other types of paper. The College will use the most economical means available, including double sided printing.
5. **Labor costs directly as with duplication or publication, including making paper copies, making digital copies, or transferring digital public records.** This portion of the fee will not exceed the hourly wage of the lowest paid employee capable of performing the task. It will be charged in 15 minute increments or more, with partial time rounded down and may include up to 50% of the applicable labor charge for fringe benefits. It will not include overtime wages unless the requestor agrees.
6. **Actual cost of mailing, if any, for sending the public records in a reasonably economical and requestor agrees.** The College may charge for the least expensive form of postal delivery confirmation.

When the College charges a fee, it will include the details of the fee charged on a form the College uses called the Statement of Fees for Freedom of Information Acts Requests. This form also includes a Fee Itemization form that has a breakdown of the figures used to calculate the total of each fee category.

D. The College's Deposit Requirements

If a fee will exceed \$50.00, exclusive of any fee amount the College may waive, the College may require a 50% fee deposit before it begins to process a FOIA request. If a deposit is required, the College will also include a non-binding, best efforts estimate regarding the time frame it will take the College to provide the public records to the requestor.

If the College requires a fee deposit, the requestor must submit cash (in person only), a money order, or a check payable to: "Oakland Community College" with the applicable FOIA Request number (which is provided on the Form the College sends to the requestor) printed in the memo line on the check. Mail a copy of this form and your money order or check to:

Oakland Community College
Attention: FOIA Coordinator
2480 Opdyke Rd.
Bloomfield Hills, MI 48304

Under certain circumstances, the College may require a deposit of 100% from a requestor who has not paid a previous FOIA fee in full to the College before the College begins another search for that

requestor. The College will only require this 100% deposit if **all** of the following apply: (a) the previous final fee was not more than 105% of estimated fee; (b) records made available contained the information being sought in prior request and are still in the College's possession; (c) public records were made available to the requestor subject to payment within the time frame estimate; (d) 90 days have passed since written notification to the requestor that the records were available; and (e) the requestor is unable to show proof of prior payment to the College.

The College will no longer require an increased deposit due to failure to pay if **any** of the following apply: (a) the requestor can show proof of prior payment in full; (b) the College is subsequently paid in full; (c) three hundred sixty-five (365) days have passed since the requestor made the written request for which full payment was not remitted.

Finally, after the College finishes processing a FOIA request for which the requestor provided a fee deposit, the requestor must pay the remaining balance of the actual fee before the College provides the documents to the requestor.

E. Avenues for Challenge and Appeal

A requestor whose request has been denied in full or in part, or who believes the fee the College has required exceeds the amount permitted by law, may appeal the denial or fee to the Chancellor of the College. The appeal shall state the word "appeal" and identify the reasons why the denial should be reversed or why the fee is excessive.

Within 10 business days after receipt of the appeal: (1) the Chancellor may reverse the initial denial determination or uphold the initial denial determination or a do combination of both; and/or (2) the Chancellor may waive, reduce or uphold the fee or issue a notice extending the College's response time up to 10 business days and provide the reason why such an extension is necessary. In upholding or reducing a fee, the Chancellor must provide a written determination providing the basis for the fee amount. The Chancellor will also certify that the statements included in the written determination are accurate and that the College's fee complies with the College's FOIA procedure and guidelines and FOIA itself.

A requestor whose request has been denied in full or in part, or who believes the fee the College has required exceed the amount permitted by law, may also file an action in circuit court. Such filing must be within 180 days after the date of the final determination to deny the request or within 45 days after receiving a notice of required fees or a determination of an appeal to the Chancellor. If the requestor prevails in such an action, the court may reduce the fee and/or award reasonable attorney fees, costs, and disbursements. Further, if the court finds the College's determination to be arbitrary and capricious, the requestor may receive punitive damages of \$1,000.00 related to a denial or \$500.00 related to an excessive fee. If a court finds the College acted willfully, intentionally or in bad faith, the College may be ordered to pay a civil fine of \$2,500.00 to \$7,500.00.

EXHIBITS:

16. Attached to these procedures and guidelines and written public summary you will find the following exhibits:
 - a. Response to Request for Public Records – FOIA form (OCC132)
 - b. Statement of Fees for Freedom of Information Act Requests

OTHER AVAILABLE INFORMATION:

- a. List of FOIA Coordinator and designees
- b. Listing of Section 13(1) exemptions