

EXHIBIT B

FREEDOM OF INFORMATION ACT PROCEDURE

I. PURPOSE

To address the process by which Lansing Board of Water and Light (BWL) will review and respond to Freedom of Information Act requests.

II. APPLICATION

All written requests for public records that are made pursuant to the Freedom of Information Act.

III. DEFINITIONS:

- A. *FOIA Coordinator*: An individual designated by a public body to accept and process requests for public records.
- B. *Person*: An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.
- C. *Public body*: A public body shall include the Lansing Board of Water and Light.
- D. *Software*: A set of statements or instructions that when incorporated in a machine, usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.
- E. *Unusual circumstances*: Any one or a combination of the following, but only to the extent necessary for the proper processing of a request:
 - 1. The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

2. The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.
- F. *Writing*: Handwriting, typewriting, printing, photostatting, 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, drums, or other means of recording or retaining meaningful content.
- G. *Written request*: A writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

IV. PROCEDURE

A. Receipt of Request.

1. Any employee receiving a "written request" shall transfer the request to the FOIA Coordinator.
2. The FOIA Coordinator shall keep a copy of all written requests for public records on file for no less than one (1) year.
3. The FOIA Coordinator shall review the request initially to determine the following:
 - a. The FOIA Coordinator shall determine if an extension is necessary. If an extension is necessary, the FOIA Coordinator shall send a notice extending for not more than ten (10) business days the period during which the public body shall respond to the request. A public body shall not issue more than one notice of extension for a particular request. The extension letter must specify the reasons for the extension and the date by which the public body will do one of the following: (1) grant the request; (2) issue a written notice to the requesting person denying the request; or (3) grant the request in part and issue a written notice to the requesting person denying the request in part.
 - b. The FOIA Coordinator shall determine if a deposit is necessary. BWL may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds \$50.00. The deposit shall not exceed one-half of the total fee.

- c. If the FOIA Coordinator requests a deposit, the request will not be processed until the deposit is received by BWL.

B. Processing the Request.

1. The FOIA Coordinator must respond to the FOIA request within five (5) business days of receiving the request. If an extension is requested, the FOIA Coordinator must respond to the request within fifteen (15) business days of receiving it. A written request made by facsimile, electronic mail, or other electronic transmission is not received by BWL until one (1) business day after the electronic transmission is made.
2. The FOIA Coordinator shall determine whether to (1) grant the request; (2) issue a written notice to the requesting person denying the request; or (3) grant the request in part and issue a written notice to the requesting person denying the request in part.
3. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to six (6) months, at the request of the subscriber, and shall be renewable.
4. The person making the request has the option to request to inspect the documents instead of receiving copies. BWL shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. BWL may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.
5. BWL shall protect public records from loss, unauthorized alteration, mutilation, or destruction. This includes making copies before the requester reviews the documents.
6. BWL is not required to make a compilation, summary, or report of information.
7. This act does not require BWL to create a new public record and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1) of the FOIA, of an already existing public record.

8. If BWL does not have the document requested, BWL shall treat the response as a denial.
9. If requested, BWL shall provide a certified copy of the public record.

C. Denying a Request.

1. The FOIA Coordinator or his or her designee shall sign any response that denies or denies in part a FOIA request.
2. A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request.
3. The written notice shall contain:
 - a. An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
 - b. A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

D. Exemptions. BWL may refuse to release public records or portions of public records if they are exempt from disclosure pursuant to Section 13 of the FOIA.

E. Separating Exempt from Non-Exempt Material.

1. BWL must separate exempt from non-exempt public record. If the person requests inspection, the FOIA Coordinator should make a copy of the record, redact the record and permit the requester to review the redacted copy.
2. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, BWL shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

F. Fees.

1. A fee may be charged for the cost of search, examination, review, and the

deletion and separation of exempt from nonexempt information if the failure to charge the fee would result in unreasonably high costs to BWL because of the nature of the request in the particular instance, and the FOIA Coordinator specifically identifies the nature of the unreasonably high costs to BWL.

- a. Costs of search, examination, review, and the deletion and separation of exempt from nonexempt information of \$50.00 or more are considered unreasonably high costs to BWL due to the amount of time that must be devoted to such tasks in order to incur that level of costs and the cumulative effort such requests would have on BWL's ability to provide its usual services to the public.
 - b. For costs of search, examination, review, and the deletion and separation of exempt from nonexempt information less than \$50.00, the FOIA Coordinator shall determine when the costs are unreasonably high in a particular instance, including but not limited to instances when the costs would be excessive and beyond the normal or usual amounts for responding to a request.
2. BWL may charge the actual cost of mailing and actual incremental cost of duplication or publication for inspection including labor.
 3. The following Schedule of Fees will apply to requests for documents under the FOIA. The list of costs shall not be deemed to be all-inclusive. Other fees may be calculated and established by the FOIA Coordinator in accordance with the provisions of FOIA.
 - a. STANDARD LEGAL AND LETTER SIZE PUBLIC DOCUMENTS: One or two sided sheets \$1.00 for the first page and \$.15 cents for each additional page.
 - b. LABOR: Charge based upon hourly wage, including but not limited to fringe benefits, of lowest paid BWL employee capable of retrieving the information necessary to comply with a request under the FOIA.
 - c. POSTAGE: Actual cost of postage will be charged for anything that is requested to be mailed.
 - d. RETURNED CHECKS: \$25.00 charge.
 - e. VIDEO OR AUDIO TAPES: Actual cost of the tape and actual cost of the reproduction of tape.

- f. COMPUTER DISKS: Actual charge of the disks.
- 4. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request from an individual who is entitled to information under the FOIA and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the costs because of indigence.
- 5. The FOIA Coordinator may reduce or waive the imposition of fees if the Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.
- 6. After a person requesting information pays for the costs of production, the FOIA Coordinator shall release the requested information to that person.

G. Challenges to FOIA Denials.

- 1. Appeals: A person has a right to appeal to the General Manager any denial of a FOIA request.
 - a. The General Manager must respond to the Appeal within ten (10) days following the submission of the Appeal.
 - b. Under unusual circumstances, BWL may issue a notice extending for not more than ten (10) business days the period during which BWL shall respond to the written appeal. BWL shall not issue more than one (1) notice of extension for a particular written appeal.
 - c. If no extension is granted, within ten (10) days after receiving a written appeal, BWL shall do one of the following: (1) reverse the disclosure denial; (2) issue a written notice to the requesting person upholding the disclosure denial; and (3) reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
- 2. Circuit Court Action:
 - a. If the General Manager upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court.

- b. A requester may also seek judicial review of the nondisclosure without seeking an appeal first.
- c. The action must be commenced within 180 days of the final denial.
- d. 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, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.
- e. If the Court determines the denial was arbitrary and capricious, the court may assess punitive damages.

IV. MONITORING AND REVIEW.

This procedure shall be reviewed annually by the BWL's General Counsel. Compliance with this procedure shall be monitored through internal quality improvement reviews and committees.

V. REFERENCES.

- A. Michigan Freedom of Information Act, MCL 15.231, et seq, Act 442 of the Public Acts of 1976.

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