



# BAY COUNTY FOIA APPEAL FORM TO APPEAL AN EXCESS FEE

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

**BAY COUNTY FOIA COORDINATOR**

515 Center Avenue, Ste. 402, Bay City, MI 48708, (989)895-4131, foia@baycountymi.gov

If you believe that the fee charged by the County to process your FOIA request exceeds the amount permitted by state law, you must first file a written appeal for a fee reduction to the Office of the County Executive. The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. You may use this form, but you are not required to. Bay County's FOIA Procedures and Guidelines include additional information regarding appeals.

## **YOUR CONTACT INFORMATION**

Your Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Firm/Organization: \_\_\_\_\_ Email: \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

## **APPEAL INFORMATION**

**Request for:**  Copy  Certified copy  Record inspection  Subscription to record issued on regular basis

**Delivery Method:**  Email  Mail  Will Pick Up  Will make own copies onsite

**Record(s) You Requested** (Listed here or see attached copy of original request):

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**Reason(s) for Appeal:** The appeal must specifically identify how the required fee(s) exceed the amount permitted.

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Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **NOTICE OF REQUESTER'S RIGHT TO SEEK JUDICIAL REVIEW**

Under Section 10a of the FOIA (MCL 15.240a), you have the right to appeal a FOIA fee that you believe exceeds the amount permitted by the county's written Procedures and Guidelines. You can appeal to the County Executive or initiate an action in the Circuit Court for a fee reduction within 45 days after receiving notice of the required fee or an appeal determination by the County Executive. The county won't process the request until the fee dispute is resolved. Should the court find that the county charged an excessive fee, it will reduce the fee to an allowable amount. (Additional details on the back of this form.)

## FREEDOM OF INFORMATION ACT (EXCERPT) Act 442 of 1976

### 15.240a. Fee in excess of amount permitted under procedures and guidelines or MCL 15.234. Sec. 10a.

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body 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.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, 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 head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies: (i) The public body does not provide for appeals under subdivision (a). (ii) The head of the public body failed to respond to a written appeal as required under subsection (2). (iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body 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 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body 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. Failure to comply with an order of the court may be punished as contempt of court.

(5) 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.

(6) 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 public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body 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.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

**History:** Add. 2014, Act 563, Eff. July 1, 2015