

Blue Water Area Transportation Commission

FOIA Procedures

Introduction

The Blue Water Area Transportation Commission (hereafter referred to as “BWATC”, “we” and “us”) adopts the public policy set forth in the Michigan Freedom of Information Act, 1976 PA 442 (“FOIA”), that all persons, except those persons incarcerated in state, county or federal correctional facilities, 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 public employees, consistent with the FOIA. Access to information is important so that people may fully participate in the democratic process. These Procedures and Guidelines are enacted in compliance with the requirements set forth in Section 4(4) of the FOIA.

BWATC: Summary of FOIA Procedures

This is a summary of procedures for the general public on how to make a FOIA request to BWATC. This summary also explains how to understand BWATC's responses to FOIA requests, BWATC's deposit requirements, as well as BWATC's fee calculations, and your appeal rights.

Since the summary must include an easily understood description of procedures, the BWATC Board believes that it is unnecessary for the procedures to repeat what is otherwise stated in the FOIA and the attachments. We will post these procedures on our website (www.bwbus.com). This summary also includes the contents of our summary and fee itemization form.

Who at BWATC Handles FOIA requests?

The Labor and Community Relations Manager is designated as the FOIA Officer. BWATC's General Manager may designate other individuals to fulfill the duties of the FOIA Officer position from time to time.

All BWATC employees must forward FOIA requests to the FOIA Officer, and must endeavor to assist, guide, and cooperate with the FOIA Officer. If any BWATC employee receives a FOIA request, that employee must direct it to the FOIA Officer upon receipt.

How Do You Make a Written FOIA Request?

A FOIA request must be made in writing and directed to the attention of our FOIA Officer at contact@bwbus.com or FOIA Officer, BWATC, 2021 Lapeer Ave., Port Huron, Michigan 48060.

How Detailed Must a Request Be?

A FOIA request for records must be specific enough for us to identify which records you want. We may deny your request if it does not sufficiently describe the records you are seeking or requires us to create a new public record or to make a compilation, summary, or report of information.

A request from a person (other than a person qualified as indigent) must also include the requesting person's complete name, address and contact information. If the request is made by a person other than an individual, then the request must contain the complete name, address, and contact information of the person's agent who is an individual.

An address must be written in compliance with the United States Postal Service's addressing standards and must include a valid telephone number or email address.

Must Your Written Request Specifically Mention FOIA?

No, but we encourage you to mention "FOIA" in the title, subject line, or first sentence of your request. And the law relieves us from some duties if your request does not:

- Convey a request for information within the first 250 words of the body of a letter, facsimile, e-mail or e-mail attachment; or
- Specifically include on the front of your envelope, or in the subject line of your letter, e-mail, or facsimile cover page, either the appropriate legal code reference for the FOIA statute, or the words, characters, or abbreviations for any of the following (or a recognizable misspelling): “freedom of information”, “information”, “FOIA”, or “copy”.

Here are the two consequences if your request does not do either of the above:

- We are excused from FOIA’s rule that we reduce our fees for every day that we are late responding to a request. Otherwise, we must reduce our fees by 5% for each day we are late, with a maximum reduction of 50% of our fee.
- Our failure to respond within FOIA’s deadline will not be treated as a denial of your request. So you would not be able to appeal at that time.

How Quickly Must We Respond?

Within five business days (not calendar days) after receiving your request, our FOIA Officer will respond by:

- Granting your request and providing the requested records;
- Granting your request and providing a best-effort estimate by which the documents will be delivered;
- Denying your request;
- Granting your request in part by providing the requested documents or providing a best-effort estimate by which the documents will be delivered and denying your request in part; or
- Issuing a notice extending, for up to ten business days (not calendar days), the period during which we will respond to your request.

If we send a notice extending our time to respond, it must specify the reasons for the extension and the date by which we will respond.

When Does Our Time Period for Responding Begin?

The time period begins when our FOIA Officer receives the request. A request made by facsimile, electronic mail (e-mail), or other electronic transmission is not treated as received until one business day after the electronic transmission is made. However, if the e-mail request is delivered to our “spam” or “junk-mail” folder, the request is not treated as received until one day after we first become aware of the written request.

Must We Respond to a Verbal FOIA Request?

No, however, if you make a verbal request to one of our employees for information available on our web site, that employee must, where practicable and to the best of that employee’s knowledge, tell you the web site address.

Must We Respond if the Requested Records are Available on our Web Site?

Requested information being available on our web site does not excuse us from responding to your request. If the requested information is available on our web site, we will tell you that in our response and will include a specific webpage address, if practical.

Are We Required to Create Records?

The FOIA does not require BWATC to make a compilation, summary, or report of information. Further, BWATC is not required to create a new public record in order to respond to a request.

What Fee May We Charge for Responding to a FOIA Request?

We may charge a fee for providing copies of requested documents and/or for copying necessary for a requested inspection of documents. The fee is limited to actual costs that are within one of the six categories itemized on our fee itemization form. We may require you to pay the fee in full before delivering the requested records to you.

We will generally not charge for requests if the total allowable fee would be less than \$20. We also will not charge a fee if all of your requested records are exempt from disclosure.

For any material already available on our web site, we will not charge a fee, but will direct you to the location of the requested documents. If your request encompasses documents on our web site and those not available on-line, we will itemize charges separately for requested records that are available on our web site from those that are not. If you still want paper or electronic copies of records available on our web site, we must provide those copies but we may charge a fringe benefit multiplier on our labor costs that is greater than the 50% limitation that the law otherwise imposes, and we may charge fees for paper copies provided.

Is Anyone Exempt from Having to Pay Those Fees?

Yes, in part. We may not charge a fee if you submit an affidavit stating that you are indigent and are receiving specific public assistance or, if not receiving public assistance, you state facts showing your inability to pay a cost because of indigency. This exemption applies only to the first \$20, however, of a fee.

You are not eligible for this exemption, however, if either of the following apply:

- You have already received discounted copies twice during the same calendar year, or
- You request the information in conjunction with outside parties who are offering or providing payment or other value to you for making the request. We may require that your affidavit states that the request is not being made in this way.
- If we believe you are not eligible for a requested discount, we must inform you of the specific reason for our conclusion.

This exemption applies also to a nonprofit organization designated by the State of Michigan to carry out activities under Subtitle C of the state's developmental disabilities, assistance and bill of rights act and the protection and advocacy for individuals with mental illness act.

But the discount for such a nonprofit organization applies only if the request is (a) made directly on behalf of that organization or its clients, (b) made for a reason wholly consistent with the organization's mission, and (c) is accompanied by documentation, if so requested by BWATC, of the organization's designation by the State.

When May We Require a Deposit Before Responding to your FOIA Request?

We may require a deposit from you before providing the requested records and if so, will send you a deposit notice. A deposit may be required if (a) we estimate in good faith that the fee will be more than \$50, (b) the deposit is not more than 1/2 of our total estimated fee, and (c) we include in our deposit notice to you a detailed itemization of our estimated fee and our good faith best-efforts estimate of how long it will take us to comply with your request. That time frame estimate does not bind us, but it does not extend our response deadline.

We may request a deposit of up to 100%, however, if you have not paid in full the amount charged for any previous FOIA request from you. This increased deposit applies only if all of the following conditions are met:

- The final fee for the previous request was not more than 105% of our estimated fee for that request.
- The records we made available contained the information you requested in the previous request and are still in our possession.
- We made the records available to you, subject to payment, within the time frame estimated to you under that request.
- At least 90 days have passed since we notified you that your records were available for pick-up or mailing.
- You are unable to show us proof that you paid that final fee.
- We gave you a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

We may not charge the increased deposit to you if you pay in full for the prior request or at least 365 days have passed since you made the written request that remains unpaid.

Will a Request be Deemed Abandoned if the Deposit is Not Paid?

If a deposit, or increased deposit as identified above is not received by BWATC within 45 days from receipt by the requester of a deposit notice from us, and the requester has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requester and BWATC is no longer required to fulfill the request.

Our deposit notice is considered to be received 3 days after it was sent, no matter how we sent it. Our deposit notice will include the date by which the deposit must be received, which is 48 days after the deposit notice is sent.

Must We Respond to a Person Who Still Has Not Paid the Fees Charged for a Previous FOIA Request?

Yes, but we may require a larger deposit. See the answer to the previous question.

Are Any Records Exempt from Disclosure?

Yes; FOIA allows for a number of exemptions to disclosure. Commonly-known exceptions include personal information of employees or other individuals contained in our records, and certain interoffice communications. If your request asks for both exempt and non-exempt records, our response will describe the redacted (cut-out or blacked-out) material in a general way, unless the description would reveal the exempt information. If your request asks for records that are exempt from disclosure we will provide you with an explanation of the basis of that exemption.

If you request records that are exempt from disclosure, you must still pay fees we charge for the work undertaken to process your request. We may decide to waive those charges.

How Will We Deliver Requested Copies?

Unless you request another method, we will mail copies by U.S. first-class certified mail. If the copies exceed first-class weight limits, we will ship them via U.S. Parcel Post with delivery confirmation. Allowable charges for postage may be assessed.

You may request electronic copies of documents be emailed to you. However, we may assess fees for preparing documents to be sent electronically if they are not available in that format, or require separation of exempt from nonexempt information.

May You Choose to Inspect Records Instead of Requesting Copies?

Yes. We may still charge a fee for responding to your request, including labor costs necessary for searching for the requested records and separating exempt from nonexempt information. We will not redact (cut-out or black-out) original documents for inspection. So if exempt information is included in the requested records, we may charge for making copies that can be redacted to protect exempt information from disclosure.

We may also impose reasonable inspection rules to (a) protect our records and other property from loss, unauthorized alteration, mutilation, and destruction, and (b) prevent interference with our public transportation business. This may include, for example, keeping one of our employees present while you inspect records and videotaping your inspection.

What Appeal Rights Does a Person Have?

You have rights to appeal the amount of the fee we charge and a denial of your request for records. Both kinds of appeals require you to send a written appeal addressed to our Board Chair, care of contact@bwbus.com, or Board Chair, BWATC, 2021 Lapeer Ave, Port Huron, Michigan 48060. The appeal must be titled "FOIA Appeal". Fee appeals must identify how our fee exceeds what the law allows. Other appeals must give the reasons

why denial of the request should be reversed. You may also appeal directly to the Circuit Court. In some cases the court may order us to pay damages, attorney fees, fines, and penalties.

Within 10 business days (not calendar days) after receiving a fee appeal, our Board must:

- Waive the fee;
- Reduce the fee and give you a written determination of the specific basis under FOIA for supporting the remaining fee, including certifications required by FOIA;
- Uphold the fee and give you a written determination of the specific basis under FOIA for supporting the required fee, including certifications required by FOIA; or
- Issue a notice extending for no more than 10 business days (not calendar days) the time period for responding to your appeal. This notice must include a detailed reason why the extension is necessary.

Within 10 business days (not calendar days) after receiving a written appeal on grounds other than fees, our Board must:

- Uphold the denial;
- Reverse the denial;
- Reverse the denial in part and uphold the denial in part; or
- Under unusual circumstances, extend the appeal deadline for an additional 10 business days.

For measuring the 10-day period for action on appeals, an appeal is deemed “received” on the day of the board’s first regularly scheduled meeting following the submission of the appeal. Our board may not issue more than one notice of extension for an appeal. We will notify you promptly of our board’s decision on your appeal.

What Else Should You Know?

- We will keep a copy of each FOIA request for no less than one year from the date we receive it.
- We reserve the right to vary from these procedures on a case-by-case basis.
- We reserve the right to change these procedures as we deem appropriate or to conform to subsequent court rulings clarifying our responsibilities under Michigan’s FOIA law.

BWATC FOIA Fee Itemization

Person submitting the request: _____

Date request received: _____

I. Labor Costs: Searching for, Locating, and Examining Records

A. Hourly wage: \$____ /hour

B. Total hours (not counting overtime; nearest quarter hour, rounded down): ____

C. Multiply hours by rate: \$____

D. Fringe benefit percentage: ____%

E. Fringe benefit amount: \$____

F. Overtime (if requester specified)

1. Overtime rate: \$____

2. Overtime hours: ____

G. Total for Section I: \$____

II. Labor Costs: Separating and Deleting Exempt from Nonexempt Information

A. Hourly wage: \$____ /hour

B. Total hours: ____

C. Multiply hours by rate: \$____

D. Fringe benefit percentage: ____%

E. Fringe benefit amount: \$____

F. Overtime

1. Overtime rate: \$____

2. Overtime hours: ____

G. Contracted labor (if applicable)

1. Firm/person name: _____

2. Hourly rate: \$____

3. Hours: ____

4. Total: \$____

5. Deduction (prior redaction): \$____

6. Net total: \$____

H. Total for Section II: \$____

III. Cost of Non-Paper Copies

A. Cost per disc/tape: \$____

B. Number of units: ____

Total for Section III: \$____

IV. Cost of Paper Copies

A. Cost per sheet: \$____

B. Number of sheets: ____

Total for Section IV: \$____

V. Labor Costs for Providing Copies

A. Hourly wage: \$____ /hour

B. Total hours: ____

C. Multiply hours by rate: \$____

D. Fringe benefit percentage: ____%

E. Fringe benefit amount: \$____

F. Overtime

1. Overtime rate: \$____

2. Overtime hours: ____

G. Total for Section V: \$____

VI. Mailing Costs

A. Postage: \$____

B. Delivery confirmation: \$____

C. Expedited delivery: \$____

D. Insurance: \$____

Total for Section VI: \$____

LESS: 5% of labor for each day beyond FOIA deadline (max 50% reduction): (\$____)

TOTAL FEES CHARGED FOR THIS REQUEST: \$____

Notes

- We will give you two separate itemizations, one for records available on our website and one for all other records.
- If you choose to inspect records at BWATC instead of requesting copies, BWATC does charge labor costs for the BWATC person's time to monitor your inspection.
- Overtime wages may not be used to calculate the cost of fringe benefits.
- Overtime wages are not included in labor costs unless overtime is specifically stipulated by the requester and clearly noted above.
- All hourly wages are the hourly wage of BWATC's lowest-paid employee capable of performing the specified tasks, regardless of whether a person paid at that rate is actually available or actually performs the labor.