1. Statement of Policy

Michigan public universities are required to provide “full and complete information regarding [their] affairs . . . and the official acts of those who represent them as public officials and public employees . . . . The people shall be informed so that they may fully participate in the democratic process.” Anyone, excluding prisoners in state or local correctional facilities, may file a Michigan Freedom of Information Act (FOIA) request with WMU. Within five business days of receiving a written request, WMU must: grant the request, partially grant the request, deny the request, inform the requester that additional time is needed, require a fee deposit prior to further processing, or inform the requester that the requested record has not been sufficiently described.

2. Purpose of Policy

This policy sets forth the steps for making a FOIA request of WMU and how WMU will process such a request.

3. For Whom Policy is Most Applicable

All individuals who submit or receive requests for documents pursuant to Michigan’s FOIA statute.

4. Key Definitions

4.1. Business Day: Monday through Friday. A “business day” does not include holidays or institutional closure days.

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4.2. **FOIA Office**: The FOIA Office is housed within the Office of the General Counsel at 1903 W. Michigan Ave., Kalamazoo, MI 49003-5426. The email address is foia-officer@wmich.edu. The phone number is (269) 387-1900. The FOIA Officer is Jessica M. Swartz.

4.3. **Head of the Public Entity**: For purposes of FOIA appeals, WMU considers the President of the University to be the Head of the Public Entity.

5. **Policy**

It is WMU’s Policy to respond to all FOIA requests in accordance with the rules set forth by the Michigan FOIA Statute.

**Procedures and Guidelines**

6. **How to submit a FOIA request to WMU**

6.1.1. A FOIA request must be submitted in writing to the FOIA Office. The request may be transmitted in hard copy, by email, or by facsimile. Verbal requests will not be accepted.

6.1.2. Requests should include:

   a. Sufficient description of the record(s) sought to enable WMU to locate the record(s);

   b. Requester’s contact information.

   c. Statement that the request is being submitted pursuant to the Michigan Freedom of Information Act.

6.1.3. Requests will be deemed received:

   a. If hand-delivered or via hard copy mail, the date of receipt in the FOIA Office;

   b. If received electronically, the next business day after electronic receipt.

   c. If misrouted elsewhere on campus or delivered to the FOIA Office’s electronic junk mail folder, the request will be deemed received one business day after the FOIA Office becomes aware of the request. (The FOIA Office will check the electronic junk mail folder at least once per week.)

7. **WMU’s Response to the Request**

7.1. Within five business days of receiving the request, the FOIA Office will:

   a. Grant the request;
b. Partially grant and partially deny the request;

c. Deny the request;

d. Request additional time, up to ten business days or such other time as agreed upon, to process the request;

e. Grant the request, but provide a notice that a fee deposit is required prior to further processing, see § 4 re: Calculation and Payment of Fees; or

f. Provide a notice that the record(s) sought has (have) not been sufficiently described to enable the relevant departments or offices at WMU to locate the record(s).

7.2. A request may be denied for the following reasons:

a. Some or a portion of the records do not exist;

b. The requested records are not in WMU’s possession; and/or

c. The records are otherwise exempt from disclosure. (In this instance, WMU’s response will identify the statutory exemptions under which any information and/or documents are withheld. See FAQ, below.)

7.3. If any part of a request for records is denied, the response will set forth the procedures for challenging and/or appealing that denial. See § 6, Procedures for Challenge and Appeal.

8. Deposit Requirements

8.1. WMU requires a fee deposit prior to processing a request if the request will result in fees equal to or greater than $50.00.\(^2\)

8.1.1. The requested deposit will be up to 50% of the estimated costs of fulfilling the request.

8.1.2. WMU will not process the FOIA request further until the deposit is paid.

8.2. A person who makes a FOIA request for which a deposit is required may withdraw his or her request without charge instead of paying the required deposit.

8.3. WMU will consider the request to be withdrawn if the requestor does not pay the deposit request within 180 days of the date on WMU’s notice and request for deposit.

8.4. If, after receipt of the deposit and further processing, search, and review of the requested information, WMU determines that the processing costs will be significantly different from the estimated costs, WMU will notify the requester. Upon notification, the requester

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\(^2\) WMU has determined, consistent with FOIA, that failure to charge fees in situations where the fees would be equal to or greater than $50.00 would result in unreasonably high costs to WMU.
may choose to receive a revised fee deposit notice, or limit his/her original request to those records which may be processed within the time stated in the original fee estimate.

9. Calculation and Payment of Fees

9.1. Fees are calculated by adding together the following:

9.1.1. Labor costs for:

   a. Searching, locating, and examining responsive records;

   b. Review, separation, and redaction of exempt information; and/or

   c. Duplication or publication to producible media.

9.1.2. Materials costs for:

   a. Non-paper physical media;

   b. Paper copies (no more than $.10/page for 8 ½ x 11” or 8 ½ x 15” paper); and/or

   c. Mailing.

9.2. When WMU provides the requested information, it will include an invoice for final fees. The amount invoiced must be paid within thirty days of the date on the invoice.

9.3. WMU may require payment in full prior to delivering the final, responsive documents.

9.4. If WMU denies access to all or portions of the requested public records because they are exempt from disclosure, the requestor still must submit payment for WMU’s labor and materials costs necessary to respond to the request.

9.5. Fee reductions or waivers

9.5.1. WMU may waive or reduce fees if it determines that a waiver or reduction is in the public interest. WMU may consider a request to be in the public interest if the purpose of the request primarily benefits the general public.

9.5.2. WMU may reduce or waive fees if the requestor can prove that he or she is receiving public assistance, is indigent, or if the request is made by a specified non-profit organization. See MCL §§ 15.234 (3), (4).

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3 A copy of the standard form that WMU uses for fee itemization may be found on WMU’s FOIA office website.
4 Labor costs are estimated and charged in no smaller than 15 minute increments. Labor is charged at the hourly rate of the lowest paid employee capable of doing the work, plus applicable fringe benefits. If necessary, WMU may contract the work out and charge accordingly.
9.6. Inappropriate fee requests

9.6.1. If a requester believes that WMU is requesting fees higher than those permitted by the statute or as set forth by this policy, he or she may commence an action in the Michigan Court of Claims, requesting a fee reduction.

9.6.2. The requestor must commence such action within forty-five days of receiving the notice of the required fee. See http://courts.mi.gov/courts/coc/pages/contact.aspx

10. Multiple Requests on the same topic/from the same requestor

10.1. WMU will treat multiple, concurrent FOIA requests on the same topic(s), regarding the same record keeper(s), and/or from the same person as one FOIA request for purposes of determining fees for producing.

10.2. If a requester who has not paid the final fee for processing an earlier request files a subsequent request, WMU will require a deposit of 100% of estimated fees for processing any subsequent request.

10.3. Pursuant to the Michigan FOIA, MCL § 15.233(3), the University may deny multiple, excessive FOIA requests on the same topic(s), regarding the same record keeper(s), and/or from the same person if they cause unreasonable interference with the discharge of University functions.

11. Procedures for Challenge and Appeal

11.1. If WMU denies the request in whole or in part, the requester may appeal that decision.

11.2. To file an appeal, a requestor may either:

11.2.1. Submit a written appeal to WMU’s President, either directly to the President’s Office or via the FOIA Office.

a. The appeal must specifically use the word “appeal” and identify the reason(s) the requester seeks reversal of the denial.

b. The President must respond to the appeal within ten business days by doing one of the following:

i. Reverse the FOIA Officer’s decision;

ii. Uphold the FOIA Officer’s decision;

iii. Reverse in part and uphold in part the FOIA Officer’s decision;
iv. Issue a notice of extension for not more than ten additional business days; 

or

11.2.2. Commence a civil action in the Court of Claims within 180 days after WMU’s final determination to deny a request.

12. Additional Policy Information

Note that the MI FOIA Statute is separate and distinct from the Federal FOIA Statute. WMU is required to comply with the Michigan statute. Therefore, this policy and guidelines may differ from what requesters who are familiar with the Federal FOIA Statute are accustomed.

13. FAQs

13.1. What should I do if I receive a FOIA request?

Do not respond to the request. Forward it to the FOIA Office or Officer using the above contact information.

13.2. What types of records are exempted under FOIA?

* This list is not exhaustive, but merely an example of those most applicable to the University. Additionally, there are exceptions to the exemptions. Always contact OGC with FOIA questions. *

a. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy;

b. Certain investigating records compiled for law enforcement purposes;

c. Certain trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy;

d. Information or records subject to the attorney-client privilege.

e. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule;

f. A bid or proposal by a person to enter into a contract or agreement until either the time for the public opening of bids or proposals or deadline for submission of bids or proposals has expired, as applicable;


g. Test questions and answers, scoring keys, and other examination instruments or data used to administer an academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure;
h. Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation;

i. Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action;

j. Academic transcripts if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution;

k. Certain public records of a law enforcement agency;

l. Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures;

m. Information or records that would disclose the social security number of an individual.

n. An application, and supporting materials, for the position of president of an institution of higher education if the records or information could be used to identify a candidate for the position. However, once one or more individuals have been identified as finalists, some exceptions apply.

o. Records or information of measures designed to protect the security or safety of persons or property to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to violations of various Michigan security and safety control laws.

p. FERPA-protected records.

13.3. Are faculty records considered Public Records?

a. It depends. If the record fits into one of the exemptions listed above, they are not considered “public,” and will not be released.

b. The most common exemptions for faculty records are: 1) FERPA-protected records; 2) test questions and answers, scoring keys, and other examination instruments or data used to administer an academic examination; and 3) Communications and notes that are advisory, cover other than purely factual materials, and are preliminary to a final determination of policy or action.

13.4. May I prevent the disclosure of my records?

No. As a public institution, the University is required to disclose all non-exempt public records. However, you are encouraged to work closely with OGC to help them identify
and understand the nature of your records so they may better evaluate whether an exemption applies.

13.5. Will individuals receive notice that I am requesting records about them?

a. Generally, yes. There may be some fact-specific exceptions.

b. Under the AAUP contract, Article 11, the University must inform bargaining unit members both upon receipt of a FOIA request for their records and upon disclosure of such records (if any).

13.6. Will FERPA-protected records be disclosed pursuant to a FOIA request?

No. FOIA includes an explicit exemption for FERPA-protected records. See MCL § 15.243(2).

13.7. Are my e-mails subject to disclosure in response to a FOIA request?

If your e-mails are on the University’s e-mail system, they are subject to retrieval and review for FOIA purposes. However, only those e-mails that pertain to an official University function or position, and that do not fit under another exemption, will be released.

References

This policy is substantially similar to, and is based upon, those used by other Michigan public Universities.
