

DETROIT LAND BANK AUTHORITY

PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

Under the Michigan Freedom of Information Act (the Act or FOIA), MCL 15.231 et seq., all persons, except those who are incarcerated, can submit a FOIA request to the Detroit Land Bank Authority (DLBA) FOIA Coordinator.

In accordance with Section 4(4) of the Act, MCL 15.234(4), the following is the Written Public Summary of Detroit Land Bank Authority's FOIA Procedures and Guidelines:

FOIA REQUEST

A FOIA request is a legal process, by which a person can submit a written request to the FOIA Coordinator to access, review, or obtain a copy of a public record.

1. Not every record request should be made into a FOIA request:

- If there is a pending lawsuit, the records can be obtained through a subpoena or through a discovery request in the underlying lawsuit.
- Certain records can be obtained over the counter at the Detroit Land Bank Authority Office.
- Certain records are available online from the Detroit Land Bank Authority website.

2. The following requests are NOT FOIA requests:

- Request to draft or to create a document where none exists is not a FOIA request.
- Request to provide a narrative explanation for certain incident or situation is not a FOIA request.
- Request to answer question(s) is not a FOIA request.
- Request to complete a form or a survey is not a FOIA request.

PUBLIC RECORD

Section 2(e) of the Act, MCL 15.232(e), defines “**public record**” as “a writing prepared, owned, used, in the possession of, or retained by a **public body** in the performance of an official function, from the time it is created.”

Pursuant to the Act, the Detroit Land Bank Authority is a **public body**. Therefore, all records that are prepared, owned, used, in the possession of, or retained by the DLBA in its official capacity are public records.

Does this mean that all records prepared, owned, used, in the possession of, or retained by the DLBA must be disclosed or released to those who request such information or record under the Act?

No.

Although all public records of the DLBA are subject to disclosure pursuant to the Act, certain information or record may be exempt from disclosure under the Act or by another state or federal statute.

- 1. Section 13 of the Act, MCL 15.243, provides a list of information and records that may be exempt from disclosure under the Act.**

Therefore, if any individual seeks information or records that fall under the category of one or more of the listed exemptions, the DLBA may deny a portion of or the entire FOIA request. However, when doing so, the DLBA must identify the exemption under the Act to the individual who is seeking that information/record; and provide a written explanation why the exemption applies in that particular instance.

- 2. In addition to the above-referenced exemptions under the Act, there are federal and state laws which preclude the DLBA from disclosing specific information or records under those laws.**

For example, under these laws, the release of certain information by a public body employee would result in the violation of the federal or state law. In some instances, the release or the disclosure of the lawfully precluded information or record can result in criminal misdemeanor to the public employee who releases the information/record; and the employee may be punishable by imprisonment or by payment of a fine.

DETROIT LAND BANK AUTHORITY FOIA COORDINATOR

The Detroit Land Bank Authority-FOIA Coordinator pursuant to MCL 15.236(2) is the Executive Director or person designated on his or her behalf.

1. When submitting a FOIA request, you must sufficiently describe a public record so as to enable personnel from DLBA to find the record(s).
 - Please try to avoid “any and all”. If your request is too broad, personnel from DLBA who will be searching and retrieving the record will most likely encounter difficulties in locating the record(s).
 - If the scope of your request is too broad for a DLBA personnel to locate the requested records, your request may be denied or you will be presented with a request for a deposit payment.
 - The more descriptive and specific your request is, the easier it would be for DLBA personnel to search and to retrieve the requested record(s).
3. Your request should include the word “FOIA” or “FOIA Request”.

HOW YOUR FOIA REQUEST IS HANDLED BY THE DLBA

1. The FOIA Coordinator handles the request directly and will:
 - make a determination of what DLBA division would most likely be in the possession of the requested record; and
 - forward a copy of the FOIA request to the DLBA division employee responsible for maintaining the public records of that division.
 - That employee will then exercise is/her due diligence in searching for the requested record(s) from all the reasonable places and will:
 - i. inform the FOIA Coordinator that the division does not possess the requested record; or
 - ii. provide a complete copy of the requested record(s) to the FOIA Coordinator; and
 - iii. if appropriate, the employee will either complete a FOIA labor costs form or provide the necessary information required to assess: an estimated labor costs; or the labor costs incurred by the division under the Act.

2. The division employee will then either forward the no record statement, labor cost estimate, or the requested record(s) and, if appropriate, information required to assess the labor costs for that particular FOIA request, to the FOIA Coordinator, assigned attorney or the legal assistant in the Legal division.
3. The FOIA Coordinator, assigned attorney or the legal assistant will review the records:
 - to make a determination whether any applicable exemption under Section 13 of the Act, MCL 15.243; and/or
 - to make a determination whether there is any federal or state statute which would preclude the DLBA from disclosing the requested record.
7. If necessary, the FOIA Coordinator, attorney or the legal assistant will separate the exempt from the non-exempt information from the record, by either redacting the information or by withholding certain document(s).
8. Where appropriate, FOIA Coordinator, the attorney or the legal assistant will: 1) keep track of the time spent in separating the exempt from the non-exempt information; and 2) charge the labor costs to the person who submitted the request in accordance with the Act.

RESPONSES TO YOUR FOIA REQUESTS

Within five (5) business days of the receipt of the FOIA request by the DLBA's FOIA Coordinator, the DLBA (through the DLBA's FOIA Coordinator, the assigned attorney or the legal assistant), shall provide a written response to the person who submitted the FOIA request by:

1. Extending the DLBA's time to respond to the request.

- If the request was received by facsimile or email, the request is deemed to have been received by the DLBA's FOIA Coordinator on the next business day.
- Saturdays, Sundays and holidays are not considered business days.

- If the requested record is not readily accessible, the DLBA may extend its time to respond by an additional ten (10) business days.

2. Requesting a deposit payment.

- If the cost of processing the request is expected to exceed \$50, or if you have not paid for a FOIA request which was previously submitted, the DLBA will require a deposit payment before processing the FOIA request.
- The requested deposit payment will be 50% of the estimated cost provided by the DLBA division. The estimated cost will consist of: 1) an estimated number of hours it will take DLBA personnel to search and retrieve the requested records and, where appropriate, the number of hours it will take DLBA personnel to review and to separate the exempt from the non-exempt information; and 2) the hourly wage rate of the lowest paid division employee who is capable of performing the task as required under the Act.
- In accordance with the Act, the hourly labor rate will include the employee's base salary and fringe benefits.
- The DLBA will inform the person who made the request of the right to appeal or file a lawsuit pertaining to the requested deposit payment.

3. Granting the request.

- Make the requested record available for review, pickup, or delivery via email or First Class Mail.
- If appropriate, the DLBA may request payment for the records and/or the labor costs incurred by the DLBA in accordance with the Act. The response letter will provide a page count or an estimated page count; itemize the time spent by the DLBA division that searched and retrieved the requested records; the hourly wage rate of the lowest paid employee of that division who was capable of performing the task; itemize the time spent by Legal division personnel who reviewed the records for any applicable exemptions under the Act and any other federal or state law.
- If seeking labor costs, the DLBA will inform the person who made the request of the right to appeal or file a lawsuit pertaining to the requested labor costs.

4. Granting in part and denying in part the request.

- Identify what part of the request is being granted and provide a page count.

- Identify what part of the request is being denied, identify all of the relevant exemptions, include a description of document(s) that being withheld from disclosure.
- If part of the denial is based on “no record”, the response letter will serve as a certificate of no record based on information provided by the FOIA Coordinator or employee from that specific DLBA division.
- If appropriate, the DLBA may request payment for the records and/or the labor costs incurred by the DLBA in accordance with the Act. The response letter will provide a page count; itemize the time spent by the DLBA division that searched and retrieved the requested records; the hourly wage rate of the lowest paid employee of that division who was capable of performing the task; itemize the time spent by FOIA Coordinator or Legal division personnel who reviewed the records for any applicable exemptions under the Act and any other federal or state law; and the time spent in separating the exempt from the non-exempt information.
- Inform the person who made the request of the right to appeal or file a lawsuit pertaining to the requested labor costs or the portion of the request which is denied.

5. Denying the request.

- Identify the reason for the denial in accordance with the Act.
- If the denial is based on “no record”, the response letter will serve as a certificate of no record which would verify that DLBA did not possess the requested record.
- Inform the person who made the request of the right to appeal or file a lawsuit pertaining to the denial of the request.

HOW TO SUBMIT A FOIA REQUEST

You can **hand-deliver** or **mail** your written request to:

The Detroit Land Bank Authority
ATT: FOIA Coordinator
500 Griswold, Suite 1200
Detroit, Michigan 48226

4. Your written request or the completed form can also be **faxed** to:

Detroit Land Bank Authority FOIA Coordinator
(313) 638-2337

DEPOSIT PAYMENTS, CALCULATION OF FOIA LABOR COSTS AND/OR FEES

1. All deposit payment must be submitted in check or money order made payable to the "Detroit Land Bank Authority" in the specific amount requested in the response by the DLBA, within the time frame requested by the DLBA.
2. Unless otherwise directed under the Act, if the DLBA receives a request from a person who has not paid the DLBA for copies of records, which were made available for the person in his/her previously submitted FOIA request, the DLBA may require a deposit of 100% of the estimated labor costs and duplication fees before the DLBA begins processing the new FOIA request from that person.
3. All labor costs that are requested by the DLBA must be submitted in check or money order made payable to the "Detroit Land Bank Authority" in the specific amount requested in the response by the DLBA prior to making the records accessible to the person who submitted the FOIA request.
4. In accordance with the Act, a hard copy of the black and white 8.5" x 11" or 8.5" x 14" paper format, will be made available at \$0.10 per page.
5. Irregular-sized hard copy of the record can also be made available at cost.
6. A color copy of the record in 8.5" x 11" or 8.5" x 14" paper format, if available, can be made available at cost.
7. The DLBA may charge the fess and labor costs where appropriate under the Act and in the manner required by the Act. The following may be included:
 - a) Labor costs associated with searching, locating and examining the requested record, when failure to do so will result in unreasonably high costs to the DLBA.
 - b) Labor costs associated with reviewing the record to separate the exempt from the non-exempt information, when failure to do will

result in unreasonably high costs to the DLBA. If labor costs is incurred by a contractor shall not exceed an amount equal to 6 times the State minimum hourly wage.

- c) The cost of computer discs, computer tapes, other digital or similar media when the request is for non-paper physical media.
- d) Labor costs associated with copying or duplication, which includes making paper copies, digital copies, or transferring digital records to non-paper physical media or through the Internet.
- e) For paper copies, the fee shall be the total incremental cost of necessary duplication. A page count will be provided.
- f) The cost of labor directly associated with duplication or publication, including making paper copies, digital copies, or transferring digital records on non-paper media or through the internet or other electronic means.

FOIA APPEAL or FOIA LAWSUIT BASED ON A DENIAL OR A PARTIAL DENIAL OF A FOIA REQUEST

If the DLBA denies all or a portion of the FOIA request, the requesting person “may do 1 of the following”

1. Submit a written appeal to the head of the public body.

In the Detroit Land Bank Authority, FOIA appeals are handled directly by the Board of Directors. Therefore, should you choose to appeal the denial, your appeal must:

- a) be in writing;
- b) state the word “APPEAL” where it is clearly visible;
- c) identify the reason or reasons for reversal of the denial; and
- d) be directed to:

General Counsel
Detroit Land Bank Authority
500 Griswold, Suite 1200
Detroit, Michigan 48226

Within 10 business days after the Board’s first regularly scheduled meeting following submission of the written appeal, the Board of Directors shall do 1 of the following:

- Reverse the denial;

- Issue a written notice/letter to the requesting person upholding the denial;
 - Reverse the denial in part and issue a written notice/letter to the requesting person upholding the partial denial;
 - Under unusual circumstances, issue a notice/letter extending the DLBA's time to respond not more than 10 business days. An extension letter for a FOIA appeal may be issued by an attorney in the Legal division.
2. Commence an action in the Wayne County Circuit Court within 180 days after the DLBA's denial.

FOIA APPEAL or FOIA LAWSUIT BASED ON A DISPUTE OVER FEES OR LABOR COSTS

If you are disputing the DLBA's request for fees or labor costs associated with your FOIA request, including the DLBA's request that you submit a deposit payment, you "may do 1 of the following"

1. Submit a written appeal to the head of the public body.
 - A. In the Detroit Land Bank Authority, FOIA appeals are handled directly by the Board of Directors. Therefore, should you choose to appeal the fees or costs requested by the DLBA, your appeal must:
 - a) be in writing;
 - b) state the word "APPEAL" where it is clearly visible;
 - c) identify how the fee including the deposit payment, that is required by the DLBA, exceeds the amount permitted under the Act; and
 - d) be directed to:

General Counsel
Detroit Land Bank Authority
500 Griswold, Suite 1200
Detroit, Michigan 48226
 - B. Within 10 business days after the Board's first regularly scheduled meeting following submission of the written appeal, the Board of Directors shall do 1 of the following:
 - a) Waive the fee;
 - b) Reduce the fee and provide a written determination supporting the reduction;
 - c) Uphold the fee and provide a written determination supporting its decision.
 - d) Issue a written notice/letter to the requesting person upholding the denial;
or
 - e) Issue a notice/letter extending the DLBA's time to respond not more than 10 business days with an explanation why an extension is needed.

2. You may commence a FOIA lawsuit against the DLBA in Wayne County Circuit Court within 45 days after:

- a) receiving the notice of the required fee;
- b) receiving no response from the DLBA on your fee/costs appeal; or
- c) receiving a determination of your fee/costs appeal from the DLBA.