

FREEDOM OF INFORMATION ACT POLICIES AND PROCEDURES

Policy

It is the public policy of the Delta Conservation District (Delta CD) that all persons, except those persons incarcerated in a state or local correctional facility, 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 Freedom of Information Act (FOIA). Citizens shall be informed so that they may fully participate in the democratic process.

General Information

- The District's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.
- "Public record" is defined by the FOIA 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. Public record does not include computer software." The FOIA separates public records into two classes: Those that are exempt from public disclosure under section 13(1) of the act: and those that are not exempt from the public disclosure under section 13(1) and which are subject to the disclosure under the act.
- "Writing" is defined by the FOIA as "handwriting, typewriting, printing, photo-stating, 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."
- "Written request" is defined by the FOIA as "a writing that asks for information and includes a writing transmitted by facsimile, electronic mail, or other electronic means."
- "FOIA coordinator" is defined by the FOIA as an individual designated by a public body to accept and process requests for public records under the act. The FOIA Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.
- All Delta CD employees must always work through the assigned Freedom of Information Act Coordinator in responding to such requests to ensure that consistent and correct responses are provided to the public.
- Any request for information may be considered a FOIA request and within the request, includes words such as "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such.
- The District is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor

other District staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

- A request must sufficiently describe a public record so as to enable District personnel to identify and find the requested public record.
- If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request.
- When a request for a public record is received, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a spam or junk mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. **If a request is sent by email, the District has adopted the following policy: since District employees are considered field employees (on-site land visits) who work with private landowners it is quite possible that e-mails are not reviewed daily, therefore the FOIA email will be reviewed each week on Monday (if any Monday is a District holiday, the FOIA email will be reviewed the following day after the holiday or holidays have past).**
- The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Policies and Procedures to administer the acceptance and processing of FOIA requests.
- All FOIA requests must be received in writing and shall be submitted to the attention of the FOIA Coordinator by mail at: Delta CD, 2003 Minneapolis Ave, Gladstone MI. 49837 or by email to FOIA@deltacd.org.

Procedures

Responsibility

Requester

Action

1. A person desiring to inspect or receive a copy of a public record must make a written request for the public record. The request must describe the record sufficiently to enable the FOIA coordinator to find the public record. A written request may be made by U.S. Postal service, facsimile, electronic mail, or other electronic transmission. Requesters must provide their name, address and date of request so that the Delta CD can document that a request has been made to properly process and assist the Delta CD in determining excessive requests for the same information.

FOIA Coordinator

2. The FOIA Coordinator must issue a written notice in response to a FOIA request within five (5) business days after receiving the request. A second written notice may be issued within the five-day notice indicating that due to the nature of the request the District needs an additional 10 business days to respond for a total of no more than 15 business days.

- FOIA Coordinator 3. The FOIA Coordinator is responsible for determining whether a FOIA request is granted and or denied in full or in part. By the way of example, and not limitation, the FOIA Coordinator may deny a request for the following reasons: (a) the information is of personal nature, where the public disclosure would constitute a clearly unwarranted invasion of an individual's privacy; (b) information or records are subject to the attorney-client privilege; or (c) communication within a public body or between public bodies of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to a final agency action or policy and that the public interest is encouraging frank communication between officials and employees of public bodies clearly outweigh the public interest in disclosure. Other agencies may give their recommendations for full or partial disclosure denial of any public record. The final authority, however, rests with the FOIA Coordinator upon appeal.
- FOIA Coordinator 4. The FOIA Coordinator shall determine the fees for search, examination, review and the deletion and separation of exempt from nonexempt information; the costs of copying and mailing. The FOIA Coordinator will work with staff to determine the fees that may be charged. Individuals who submit an affidavit stating that they are receiving public assistance or showing inability to pay costs because of indigency shall not be charged for the first \$20.00 of the fee for each request. At the time that a FOIA request is made, the FOIA Coordinator may request a good faith deposit not to exceed one-half of the total fees and costs from the person requesting the public record(s) if the total fees and costs exceed \$50.00. In making the request for a good-faith deposit the FOIA Coordinator will also provide the requestor a best effort estimate of a time frame it will take the District to provide the records to the requestor. The best effort estimate shall be nonbinding on the District, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request. If a request for public records is from a person who has not paid the District in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person.
- FOIA Coordinator 5. Where a requesting person elects to inspect public records the FOIA Coordinator shall determine what constitutes a reasonable opportunity for inspection and examination of

existing, nonexempt public records, and shall furnish reasonable facilities for inspection during usual business hours. Delta CD employees shall protect public records from loss, unauthorized alteration, mutilation or destruction. Requestors who inspect public records onsite shall: (1) be provided designated space including a table and chair; (2) review the documents in the presence of a Delta CD employee; (3) not be allowed to remove documents from the files or from the premises unless those documents are copied specifically for the requester by Delta CD staff; and (4) the Delta CD may charge a reasonable fee for an employee assisting and overseeing the process of the requester's record search, necessary copying and examination of the public records.

FOIA Coordinator 6. Employees are advised that records in Delta CD files from other agencies, public or private, generally constitute public records of the Delta CD subject to the FOIA. To assist the FOIA Coordinator in determining whether the records might be subject to confidentiality under the federal or state law, or under another basis for exemption from public disclosure, employees shall segregate or otherwise identify records that originated from another agency. Likewise, Delta CD records possessed by other public agencies might be subject to disclosure pursuant to FOIA requests made to those agencies.

Requester 7. If the FOIA Coordinator makes a final determination to deny all or a portion of a request, the requesting person has the option to submit a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial; or within 180 days after the FOIA Coordinator's final determination to deny a request, commence an action that is appropriate to compel the public body's disclosure of public records.

Record Retention

All written FOIA requests and responses for public records shall be kept on file no less than one (1) year.

Fee Schedule

The Delta CD fee schedule specifies the rates that will be charged for labor, copying, and other necessary expenses permitted under the FOIA. The fee schedule is listed below or available from the FOIA Coordinator and is updated when necessary, by District Board approval.

MCL 15.234 Section 4, Freedom of Information Act 442 of 1976, as amended, permits the Delta CD to charge a fee for public record search, necessary copying of public record for inspection, providing a copy of the public record or inspection of public records.

Labor Rates

Labor Rate – When a Delta CD employee is required to search, review, examine, prepare, inspect, delete and separate exempt from non-exempt material and then make the non-exempt material available for release.

The rate per hour is: \$30.00 per hour

A fee shall not be charged for the cost of search, examination, review and the deletion and separation of exempt from non-exempt information as provided in the Freedom of Information Act, Act No. 442 of P.A. of 1976, Section 15.234 Sec. 4(3), unless **failure to charge a fee would result in unreasonably high costs to the Delta CD**, because of the nature of a request in this particular instance, and the Delta CD identifies the nature of the unreasonably high costs.

It is Delta CD policy that the cost of labor and other labor-related costs will be deemed unreasonably high and charged for search, examination, review, deletion and the separation of exempt from non-exempt information when a request requires more than a total of one (1) hour of an employee's time in filling such a request or multiple requests from the same individual, company, group, club, organization, etc.

Photocopying/Facsimile

1. **Photocopying performed by a Delta CD employee** shall be at a rate of **.10 cents per page** plus labor costs for employee's time at copier (Delta CD will utilize the most economical means available for making copies including double-sided printing, if cost saving is available).
2. **Facsimile performed by a Delta CD employee** shall be at a rate of **.10 cents per page** plus labor costs for employee's time at the fax machine.
3. **Photocopying and/or Facsimile performed by an outside copy service including large documents will be at a rate of Actual Costs.**
4. **Electronic copies** will be at a rate of **\$10.00 per electronic** copy, file, disc, tape, etc. and actual staff time to reproduce (see labor rate schedule)
5. **Mailing and Shipping** will be the **actual cost** of sending the copies.

**Fees shall be uniform and not dependent upon the identity of the requesting person.

Appeals

Appeal of a Denial of a Public Record:

- When a requestor believes that all or a portion of a public record has not been disclosed or has been disclosed or has been improperly exempted from disclosure, he or she may appeal to the Delta Conservation District Board of Directors by filling a written appeal of the denial with the office of the Delta Conservation District.
- The appeal must be in writing, specifically state the word “appeal” and identify the reason or reasons the requestor is seeking a reversal of the denial.
- The District Board is not considered to have received a written appeal until the first regularly scheduled District Board meeting following submission of the written appeal.
- Within 10 business days of receiving the appeal the District Board will respond in writing by:
 1. Reversing the disclosure denial;
 2. Upholding the disclosure denial;
 3. Reverse the disclosure denial in part and uphold the disclosure denial in part;
 4. Issue a notice extending for not more than 10 business days the period during which the District Board shall respond to the written appeal.

Appeal of an Excessive FOIA Fee:

- If a requestor believes that the fee charged by the District to process a FOIA request exceeds the amount permitted by State law or under this policy, he or she must first appeal to the Delta Conservation District Board of Directors by submitting a written appeal for a fee reduction to the office of the Delta Conservation District.
- The appeal must be in writing, specifically state the word “appeal” and identify how the required fee exceeds the amount permitted.
- The District Board is not considered to have received a written appeal until the first regularly scheduled District Board meeting following submission of the written appeal.
- Within 10 business days of receiving the appeal the District Board will respond in writing by:
 1. Waving the fee;
 2. Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
 3. Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee;
 4. Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the District Board will respond to the written appeal.
- If a civil action is commenced against the Delta CD, the Delta CD is not obligated to complete the processing of a written request for the public record at issue until the court resolves the fee dispute.

Contact/Update Responsibility

Any questions or concerns regarding this policy should be directed to the FOIA Coordinator and/or FOIA Assistant Coordinator via email: FOIA@deltacd.org

Delta CD FOIA Coordinator: Joe Kaplan, District Board Chairman

Delta CD Assist. FOIA Coordinator: Heather LeDuc, District Manager

Phone: (906) 553-7700