

**POLICE AND FIRE RETIREMENT SYSTEM  
OF THE CITY OF DETROIT**

*FREEDOM OF INFORMATION ACT REQUEST POLICY  
ADOPTED: June 23, 2011*

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## ARTICLE I. DEFINITIONS

Section 1.1. Statement of Purpose. The purpose of this Policy is to establish guidelines and procedures for processing information requests in compliance with the Michigan Freedom of Information Act MCL § 15.231, *et seq.* (the “FOIA Act”).

Section 1.2. Applicability. This Policy applies to all requests for information submitted to the PFRS pursuant to the FOIA Act.

Section 1.3. Definitions. For the purposes of this policy, the following words shall have the meanings respectively ascribed to them by this section:

- (a) “*Board or Board of Trustees*” shall mean the Board of Trustees of the Police and Fire Retirement System of the City of Detroit.
- (b) “*FOIA Coordinator*” shall mean the Assistant Executive Secretary or such other individual, designated by the Board, who is responsible for accepting and processing requests for public records as outlined in this policy and the FOIA Act, and who is responsible for issuing approvals or denials of requests.
- (c) “*FOIA Request*” shall mean a writing transmitted by facsimile, electronic mail, or other electronic means, or an oral communication in which a person requests information contained in a public record and describes the public record(s) sufficiently to enable the FOIA Coordinator to identify the requested public record(s).
- (d) “*PFRS*” shall mean the Police and Fire Retirement System of the City of Detroit.
- (e) “*PFRS staff*” or “*staff*” shall mean employees or independent contractors of the PFRS, including General Counsel.
- (f) “*Public Record*” shall mean 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.
- (g) Undefined terms may be defined by reference to the FOIA Act.

## ARTICLE II. GENERAL POLICIES

Section 2.1. Compliance with the FOIA Act. It is the policy of the PFRS to comply with the FOIA Act at all times, regardless of the identity of the person submitting the FOIA Request or the information requested. Violations of this Policy or the FOIA Act by staff or Board members may result in disciplinary action.

Section 2.2. FOIA Coordinator. The Assistant Executive Secretary is designated by the Board as the FOIA Coordinator, and is authorized to take the actions specified in this Policy. In the event of the Assistant Executive Secretary’s absence or inability to perform his or her duties, the Executive Secretary of the PFRS and/or General Counsel are designated as Substitute FOIA Coordinators.

Section 2.3. PFRS Staff. PFRS staff will often be asked to assist in processing and responding to FOIA Requests. The Board considers the PFRS's staff's duties in this regard to be in addition to staff's job descriptions, and expects full compliance with direction of the FOIA Coordinator, any Substitute FOIA Coordinator, and the direction of the Board.

Section 2.4. Records Retention. FOIA Requests and responses to FOIA Requests shall be maintained by PFRS staff for a period of one year from the date of the Request or the response.

Section 2.5. Protection of Public Records and Preservation of Resources. The protection of the PFRS's public records, resources and staff time is an important consideration. In all cases, PFRS shall protect public records from loss, theft, damage, unauthorized alteration, mutilation, or destruction. In implementing this Policy, the PFRS may make reasonable rules necessary to preserve resources, protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

Section 2.6. Certified Copies. The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

Section 2.7. Public Information. The Board may post guidelines and procedures for processing FOIA Requests on its website at [www.rscd.org](http://www.rscd.org) or in a PFRS publication.

Section 2.8. The Board may establish additional rules and procedures for processing FOIA Requests in compliance with the FOIA Act.

### **ARTICLE III. RECORDS SUBJECT TO FOIA**

Section 3.1. Public Records. All public records are subject to disclosure under FOIA, unless an exemption applies under applicable federal or state law.

Section 3.2. Board Member Records. Board members' notes taken during open session of a Board meeting may be subject to FOIA. While Board members are not required to maintain any notes or other documents prepared during or for meetings, if a Board member does create and maintain a public record, Board members are encouraged to keep their PFRS-related files segregated from their personal files and stored, if possible, at PFRS. Board members acknowledge that records maintained on a PFRS computer, phone or other electronic device may be subject to the FOIA unless a specific exemption applies, and that records of a personally owned or business-owned computer or electronic device for communications regarding PFRS business may also be subject to the FOIA. Board members are encouraged to use only their official PFRS email accounts for any business relating to the Board member's duties.

Section 3.3. Staff Member Records. PFRS staff are informed that records maintained on a PFRS computer, phone or other electronic device may be subject to the FOIA unless a specific exemption applies, and that records of a personally owned or business-owned computer or electronic device for communications regarding PFRS business may also be subject to the FOIA. PFRS staff are required to comply with any applicable records retention or destruction policies at all times.

## **ARTICLE IV. PROCESSING OF FOIA REQUESTS**

### **Section 4.1. Receipt of FOIA Requests.**

- (a) Upon receipt of a FOIA Request, a copy of the date-stamped request shall be immediately forwarded to the FOIA Coordinator and General Counsel.
- (b) The FOIA Coordinator shall provide a copy of the FOIA Request to the Board at the Board's next regular meeting.
- (c) A FOIA Request is not deemed received until the next regularly scheduled meeting of the Board following the date the FOIA Coordinator receives such FOIA request.
- (d) At its next regularly scheduled meeting, the Board shall review the FOIA Request and direct the FOIA Coordinator to respond to the FOIA Request in compliance with this Policy and the FOIA Act.

### **Section 4.2. Responding to FOIA Requests: General Policies**

- (a) Legal Counsel. Prior to responding to a FOIA Request, the FOIA Coordinator shall consult with General Counsel and, if appointed, Special Counsel as to the timing, form and substance of such response.
- (b) Deadline. The FOIA Coordinator will respond to each FOIA Request within five (5) business days of receipt, as defined above in Section 3.1(c).
- (c) Form of Response: The FOIA Coordinator may respond to a FOIA Request by:
  - (i) Granting the FOIA Request in whole or in part;
  - (ii) Denying the FOIA Request in whole or in part; and/or
  - (iii) Issuing a notice of extension of the time to respond to the FOIA Request for ten (10) business days from the date of the notice. The notice shall specify the reasons for the extension and the date by which the PFRS will grant the request or deny it in whole or in part.
- (d) If an extension is sought, the PFRS will issue a substantive response granting or denying (in part and/or in whole) the FOIA Request within ten (10) business days of the date of the notice of extension in accordance with this Policy.

### **Section 4.3. Granting FOIA Requests**

- (a) If, upon review of a FOIA Request that describes a public record sufficiently to enable the PFRS to identify and locate the public record, the FOIA Coordinator shall identify responsive public records or categories of responsive public records.

- (i) In identifying responsive public records, the FOIA Coordinator shall consult with PFRS staff with knowledge of the location and existence of responsive public records.
- (ii) The FOIA Coordinator shall, when appropriate, delegate this task to PFRS staff, and/or General Counsel and/or Special Counsel.
- (b) The PFRS is not required to make a compilation, summary, or report of information in response to a FOIA Request, except as required by law. The PFRS is not required to create a new public record in response to a FOIA Request, except as required by law.
- (c) Upon identification of responsive public records or categories of responsive public records, the FOIA Coordinator, if appropriate, shall consult with General Counsel to determine whether any exemptions would prevent disclosure of the responsive public records.
- (d) If no exemptions prevent disclosure of the responsive public records, and the requesting party has asked to review the public records in person, issue a FOIA response granting the request and inviting the requesting party to contact the FOIA Coordinator or its designee to schedule an appointment for in-person review.
- (e) If no exemptions prevent disclosure of the responsive public records, and the requesting party has asked for copies of public records, the FOIA Coordinator shall grant the FOIA Requests using the procedures set forth in Section 4.4.

Section 4.4. Processing Granted FOIA Requests

- (a) Upon granting a FOIA Request, the FOIA Coordinator, in his discretion, shall determine whether to charge a reasonable fee for the costs of the public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record in compliance with Section IV of this Policy.
  - (i) If the FOIA Coordinator determines that a reasonable fee will be charged, the FOIA Coordinator will prepare a cost estimate in compliance with Section IV of this Policy.
  - (ii) If the cost estimate prepared indicates that the cost of responding to the FOIA Request will exceed \$50.00, the FOIA Coordinator may, in its discretion, require a good-faith deposit in the amount of half of the cost estimate.
- (b) If the FOIA Coordinator determines that no fee is required, the FOIA Coordinator shall, in consultation with General Counsel and/or Special Counsel:

- (i) Supervise the gathering and copying of the responsive non-exempt public records for disclosure;
  - (ii) Review the responsive non-exempt public records to be disclosed;
  - (iii) Issue a written notice granting the FOIA Request and enclosing the responsive non-exempt public records; and
  - (iv) Provide a full copy of the FOIA Request, response and responsive non-exempt documents to the Assistant Executive Secretary for retention.
- (c) If the FOIA Coordinator determines that a fee is required, the FOIA Coordinator shall, in consultation with General Counsel and/or Special Counsel:
- (i) Issue a written notice granting the FOIA Request and setting forth the cost estimate and requiring a good-faith deposit; and
  - (ii) Shall take no further action until receipt of the good-faith deposit.
  - (iii) Upon receipt of the good-faith deposit, the FOIA Coordinator shall:
    - 1 Process the good-faith deposit payment;
    - 2 Supervise the gathering and copying of the responsive non-exempt public records for disclosure;
    - 3 Review the responsive non-exempt public records to be disclosed;
    - 4 Issue a written notice acknowledging the receipt of the good-faith deposit and enclosing the responsive non-exempt public records; and
    - 5 Provide a full copy of the FOIA Request, response and responsive non-exempt documents to the Assistant Executive Secretary for retention.

Section 4.5. Denying FOIA Requests: Generally

- (a) The FOIA Coordinator shall not deny a FOIA Request without the approval of the Board or General Counsel.
- (b) The FOIA Coordinator shall deny a FOIA Request if:
  - (i) No responsive public record exists; or

- (ii) Responsive public records exist, but are, in whole or in part, exempt under federal or state statute, including but not limited to the FOIA Act and the Public Employee Retirement Security Investment Act, MCL 38.1132, *et seq.*

Section 4.6. Processing Denied FOIA Requests.

- (a) Denials of FOIA Requests shall be signed by the FOIA Coordinator and issued in writing. The notice of denial shall include:
  - (i) An explanation as to why all or a portion of the requested public record is exempt from disclosure in accordance with the Act or another statute, or
  - (ii) a certificate that the requested public record does not exist under the name given by the person or another name reasonably known to the PFRS, and
  - (iii) an explanation of the person's right to appeal (which states the word "appeal") the denial to the PFRS and/or seek judicial review in accordance with the FOIA Act, the person's right to reasonable attorney fees, costs, and disbursements as well as actual or compensatory, and punitive damages of \$500.00 if, after judicial review, the circuit court determines that the PFRS has not complied with the FOIA Act and orders disclosure of all or part of a public record.
- (b) If a notice of denial is only a partial denial (i.e. a responsive public record contains some exempt and some non-exempt information), the FOIA Coordinator shall, in its discretion, provide a redacted or separated copy of said public record. If the redaction or separation is readily apparent to a person requesting to inspect or receive copies of the form, the notice of denial shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.
- (c) The FOIA Coordinator shall provide a copy of the notice of denial to the Assistant Executive Secretary for retention.

**ARTICLE V. FOIA COSTS**

Section 5.1. Authority to Assess Costs. The PFRS may assess reasonable costs for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record.

Section 5.2. Limitations. Subject to any limitations provided by law, the fee shall be limited to: (1) actual mailing costs, and the actual incremental cost of duplication or publication including labor; and (2) the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information if not charging for such labor would result in an

unreasonably high cost to the PFRS. In determining what is an unreasonably high cost to the PFRS, the FOIA Coordinator shall consider some or all of the following factors on a case-by-case basis:

- (a) Volume of public records requested;
- (b) Form of public records requested (i.e. whether the request includes electronic or other records that are not reasonably accessible or are in storage);
- (c) Whether the description in the request is very specific or more general so that many records need to be searched or reviewed to be sure all the requested records are located;
- (d) Complexity of searching for, examining, reviewing a public record, and the deletion and separation of exempt from non-exempt information;
- (e) The need to search for, examine, and review public records from different departments, commissions, boards, or committees for the PFRS;
- (f) The anticipated hours of labor;
- (g) The available staffing for responding to the request;
- (h) The need to obtain a legal opinion or review: and
- (i) Any other similar factors designated by the FOIA Coordinator.

Section 5.3. Waiver. The PFRS may, in its discretion, waive all or part of any fee. Any such waiver shall only apply to the specific FOIA Request for which the fee is waived in writing. The PFRS has no obligation, however, to waive any fees, and may deny, for any reason and solely in its discretion, any request for a fee waiver.

Section 5.4. Cost Estimates and Assessments. The FOIA Coordinator need not prepare a written cost estimate or invoice for FOIA costs. The FOIA Coordinator, shall, however, calculate the cost estimate and any assessment using the following guidelines:

- (a) Labor costs shall be determined by calculating the number of hours by the hourly wages of the lowest paid permanent public body employee(s) capable of the various tasks required for identification, and retrieval and copying of the records requested. For the purposes of this section, “employee” does not mean “independent contractor.”
- (b) For mailing costs, the most economical means of mailing and/or delivery shall be used, and the cost of the envelope and other packaging material may be included with the cost of mailing and/or delivery.
- (c) Copying and printing costs shall be limited to the actual incremental cost of duplication or publication, determined by calculating the number of pages by the actual cost of copying or printing each page, as determined by the FOIA Coordinator.

Section 5.5. Off-Site Copying Costs. The PFRS has limited in-house capabilities for copying photographs, audio or video tapes, certain electronic data, microfiche, maps or plans. If a person requests that copies be made of these or other public records which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at PFRS rates) will also be applied to the charges of the person(s) requesting the public records.

## **ARTICLE VI. FOIA APPEALS AND JUDICIAL REVIEW**

Section 6.1. FOIA Appeals. Appeals must be submitted in writing, must specifically state the word “appeal” and identify the reason or reasons for reversal of the denial. The FOIA Coordinator, in consultation with General Counsel, shall determine the sufficiency of any purported FOIA Appeal.

### Section 6.2. Receipt of FOIA Appeals.

- (a) Upon receipt of a sufficient FOIA Appeal, a copy of the date-stamped appeal shall be immediately forwarded to the FOIA Coordinator and General Counsel.
- (b) The FOIA Coordinator shall immediately provide a complete copy of the FOIA Request, any response(s) to General Counsel, and issue a memorandum to staff requesting forwarding of any documents in staff’s possession relating to the FOIA Request at issue.
- (c) The FOIA Coordinator shall provide a copy of the FOIA appeal to the Board at its next regularly scheduling meeting. A FOIA appeal is not deemed received until the next regularly scheduled meeting of the Board following the date the FOIA Coordinator receives such appeal.
- (d) At its next regularly scheduled meeting, the Board shall review the appeal and forward it to General Counsel for response in compliance with this Policy and the FOIA Act.

### Section 6.3. Processing of FOIA Appeals.

- (a) General Counsel and the Executive Secretary shall be responsible for processing FOIA appeals. The Board may, in its discretion, appoint Special Counsel to assist General Counsel in processing FOIA appeals.
- (b) Within 10 days after the Board reviews the appeal, the Executive Secretary, in consultation with General and/or Special Counsel, shall take one of the following actions:
  - (i) Reverse the disclosure denial.
  - (ii) Issue a written notice to the requesting person upholding the disclosure denial.

- (iii) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
  - (iv) Under unusual circumstances, issue a notice extending the response deadline for not more than ten (10) business days, in which case the Executive Secretary shall take one of the actions described in (i), (ii), or (iii) above within ten (10) days of the notice of extension.
- (c) The Executive Secretary shall provide a copy of the notice or other correspondence sent pursuant to Section 6.3(b) to the Assistant Executive Secretary for retention.

Section 6.4. Judicial Review. In the event that a requesting party initiates a civil action under the FOIA Act, the Board shall direct General Counsel to defend PFRS and/or appoint Special Counsel to defend PFRS. Upon receipt of the complaint and/or learning of the imminent filing of such a complaint, the Executive Secretary shall issue a litigation hold memoranda, on a form approved by General Counsel, to all Board members and staff.