

DTC ADMINISTRATIVE PROCEDURE

DETROIT TRANSPORTATION CORPORATION	NUMBER: 25
SUBJECT: Freedom of Information Act (FOIA)	PAGE: 1 of 9
APPROVED: <u>/s/ Barbara Hansen</u> GENERAL MANAGER	EFFECTIVE: 12/1/2015
	RE-ISSUED:

DETROIT TRANSPORTATION CORPORATION 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 incarcerated, can submit a FOIA request to the Detroit Transportation Corporation (DTC) FOIA Coordinator.

In accordance with Section 4(4) of the Act, MCL 15.234(4), the following is the Written Public Summary of the DTC'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.

2. The following request are NOT FOIA request:

- Request to amend your police report of any other record is not a FOIA request.
- Request to draft or 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.
- Request to preserve evidence 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 of the Act the **DTC is a public body**. Therefore, all records that are prepared, owned, used, in possession of, or retained by DTC in its official capacity are public records.

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

No.

Although all public records of DTC are subject to disclosure pursuant to the Act, certain information or records 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, DTC may deny a portion of or the entire FOIA request. However, when doing so, DTC 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 exemption under the Act, there are federal and state laws which preclude DTC from disclosing specific information or records under those laws.**

Many state and federal laws preclude DTC from disclosing certain information. Examples include: Michigan Crimes Victim’s Rights Act, Michigan Crime Stoppers Act, federal Privacy Act, HIPPA, laws pertaining to sexually motivated crimes and juvenile offenses, child protection, and public employee retirement system investment.

Therefore, 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 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 TRANSPORTATION CORPORATION FOIA COORDINATOR

The DTC FOIA Coordinator is designated by DTC’s General Manager.

FOIA requests are assigned to DTC’s attorneys.

FOIA REQUESTS

1. All FOIA requests will be processed through an attorney under the direct supervision of the FOIA Coordinator.
2. When submitting a FOIA request, you must sufficiently describe a public record so as to enable personnel from that specific DTC department to find the record(s).
 - Therefore, your FOIA request must contain the following information:
 - A comprehensive description of the document you are seeking; and
 - Time frame and/or date(s), if appropriate
 - If you know which DTC department would have the requested the record, please identify them.
 - Please try to avoid “any and all”. If your request is too broad, personnel from DTC 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 DTC 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 DTC personnel to search and to retrieve the requested record(s).
3. Your request should include the word “FOIA” or FOIA Request”.

Although no specific form is required to submit a FOIA request to DTC, DTC has a FOIA Request Form for your use and convenience, on DTC’s website at www.thepeoplemover.com.

For convenience, you may also email the completed form or your written request, which provides sufficient information for personnel from a particular DTC department to locate the requested record to: foia@thepeoplemover.com

HOW YOUR FOIA REQUEST IS HANDLED BY DTC

FOIA requests will be assigned to an attorney unless the FOIA Coordinator handles the request directly.

1. The attorney will handle the requests under the direct supervision of the FOIA Coordinator.
2. Unless the request specifically identifies the DTC department, the attorney will:
 - make a determination of what DTC department would most likely be in the possession of the requested record; and

- forward a copy of the FOIA request to the manager of that particular DTC department.
3. The DTC department manager will then forward a copy of the request to the appropriate individual employees in the department, who would most likely have or know the whereabouts of the requested record.
 4. That employee will then exercise his/her due diligence in searching for the requested record(s) from all the reasonable places and will:
 - inform the manager that the department does not possess the requested record; or
 - provide a complete copy of the requested record(s) to the manager; and
 - 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 department under the Act.
 5. The manager 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 attorney.
 6. The attorney 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 DTC from disclosing the requested record.
 7. If necessary, the attorney 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, the attorney 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 REQUEST

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

1. Extending DTC'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 DTC's FOIA Coordinator on the next business day.

- If the request was sent by electronic mail and delivered to the DTC's spam or junk-mail folder, the request is not received until one (1) day after DTC first becomes aware of the written request.
- Saturdays Sundays and holidays are not considered business days.
- If the requested record is not readily accessible, DTC 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, DTC will require a deposit payment before processing the FOIA request.
- The requested deposit payment will be 50% of the estimated cost provided by the DTC department. The estimated cost will consist of: 1) an estimated number of hours it will take DTC personnel to search and retrieve the requested records and, where appropriate, the number or hours it will take the attorney to review and to separate the exempt from the non-exempt information; and 2) the hourly wage rate of the lowest paid department employee who is capable of performing 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.
- DTC 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 deliver via email or First Class Mail.
- If appropriate, DTC may request payment for the records and/or the labor costs incurred by DTC in accordance with the Act. The response letter will provide a page count or an estimated page count; itemize the time spent by the DTC department that searched and retrieved the requested records; the hourly wage rate of the lowest paid employee of that department who was capable of performing the task; itemize the time spent by the attorney who reviewed the records for any applicable exemptions under the Act and any other federal or state law.
- If seeking labor costs, DTC 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, identifying 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 personnel or the DTC manager from that specific DTC department.
- If appropriate, DTC may request payment for the records and/or the labor costs incurred by DTC in accordance with the Act. The response letter will provide a page count; itemize the time spent by the DTC department that searched and retrieved the requested records; the hourly wage rate of the lowest paid employee of that department who was capable of performing the task; itemize the time spent by the attorney 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 personnel or the manager from the specific DTC department informed the attorney that the department 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

1. You can download the form, complete the form, and submit the completed form to foia@thepeoplemover.com via email.
2. You can **hand-deliver** or **mail** your written request or the completed DTC FOIA request form to:

Detroit Transportation Corporation
535 Griswold Street, Suite 400
Detroit, Michigan 48226

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

Detroit Transportation Corporation FOIA Coordinator
(313) 224-2134

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 Transportation Corporation" in the specific amount requested in the response by DTC, within the time frame requested by DTC.
2. Unless otherwise directed under the Act, if DTC receives a request from a person who has not paid DTC for copies of records, which were made available for the person in his/her previously submitted FOIA request, DTC may require a deposit of 100% of the estimated labor costs and duplication fees before DTC begins processing the new FOIA request from that person.
3. All labor costs that are requested by DTC must be submitted in check or money order made payable to the "Detroit Transportation Corporation" in the specific amount requested in the response by DTC 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 8.5" x 11" or 8.5" x 14" paper format, if available, can be made available at cost.
7. DTC may charge the fees 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 DTC.

- 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 DTC. If labor costs 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 PARTIAL DENIAL OF A FOIA REQUEST

If DTC 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.

At DTC, FOIA appeals are handled directly by the General Manager. 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 Manager
Detroit Transportation Corporation
535 Griswold Street, Suite 400
Detroit, Michigan 48226

Within 10 business days after receiving a written appeal, the General Manager 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 DTC's time to respond not more than 10 business days. An extension letter for a FOIA appeal may be issued by an attorney.
2. Commence an action in the Wayne County Circuit Court within 180 days after DTC's denial.

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

If you are disputing DTC's request for fees or labor costs associated with your FOIA request, including DTC'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. At DTC, FOIA appeals are handled directly by the General Manager. Therefore, should you choose to appeal the fees or costs requested by DTC, your appeal must:
 - a) be in writing;
 - b) Stated the word "APPEAL" where it is clearly visible;
 - c) identify how the fee including the deposit payment, that is required by DTC exceeds the amount permitted under the Act; and
 - d) be directed to:

General Manager
Detroit Transportation Corporation
535 Griswold Street, Suite 400
Detroit, Michigan 48226
 - B. Within 10 business days after receiving a written appeal, the General Manager 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 DTC'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 DTC in Wayne County Circuit Court within 45 days after:
 - a) receiving the notice of the required fee;
 - b) receiving no response from DTC on your fee/costs appeal; or
 - c) receiving a determination of your fee/costs appeal from DTC.

RECORD RETENTION

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