

## CITY OF CLAWSON FIRE DEPARTMENT EMPLOYEES PENSION PLAN

Adopted: November 2, 2015

Re: Freedom of Information Act Procedures and Guidelines

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WHEREAS, the Board of Trustees is vested with the authority and fiduciary responsibility for the administration, management and operation of the Pension Plan, and

WHEREAS, the Board of Trustees has fiduciary duties to the members and beneficiaries of the Pension Plan and shall discharge these duties solely in their interests for the exclusive purposes of providing benefits and defraying reasonable expenses, and

WHEREAS, the Board of Trustees acknowledges the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended (MCL §15.231 et seq), and recognizes its responsibility to act consistent herewith, and

WHEREAS, in the operation of the Pension Plan, the Board is aware of certain privacy and confidentiality issues involving members/beneficiaries as well as commercial or financial information provided to it in the course of investing the assets of the Pension Plan, and

WHEREAS, the Board of Trustees desires to formalize its policies, procedures and guidelines with respect to Freedom of Information Act requests and responses thereto,

THEREFORE BE IT RESOLVED, that the Board of Trustees hereby adopts the following Freedom of Information Act policies, procedures and guidelines:

- A. All FOIA requests must be in writing and addressed and/or delivered to the Board of Trustees. No specific form to submit a request for a public record is required.
- B. Requests received on behalf of the Board of Trustees shall be dated and time stamped upon receipt. If a request for a public record is received by facsimile or electronic mail (email), the request is deemed to have been received on the following business day. If a request for a public record is delivered to the Pension Plan's spam or junk-mail folder, the request will be deemed to have been received on the day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note the date it was delivered to the spam or junk mail folder and the date it was discovered by the Pension Plan.
- C. The City Clerk is hereby designated as the FOIA Coordinator of the Pension Plan for purposes of responding to Freedom of Information Act requests.
- D. A copy of all FOIA requests shall be immediately provided to Legal Counsel.
- E. Legal Counsel shall promptly review all Freedom of Information Act requests received on behalf of the Board of Trustees and coordinate the response thereto with the FOIA Coordinator.

- F. The FOIA Coordinator, after discussion with Legal Counsel, is designated as the person responsible for granting or denying Freedom of Information Act requests. The FOIA Coordinator will respond to a request in one of the following ways:
- Grant the request.
  - Issue a written notice denying the request.
  - Grant the request in part and issue a written notice denying in part the request.
  - Issue a notice indicating that due to the nature of the request the FOIA Coordinator needs an additional 10 business days to respond to the request.
  - Issue a written notice indicating that the public record requested is available at no charge on the Pension Plan's website.
- G. If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable cost incurred to process the request to the person making the request and also provide a non-binding, best efforts estimate of a time frame it will take the Pension Plan to provide the records to the requester.
- H. If the request is denied or denied in part, the FOIA coordinator shall provide;
- An explanation as to why a requested public record is exempt from disclosure; or
  - A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the Pension Plan; or
  - An explanation of the public record or information within a public record that is separated or deleted from the public record; and
  - An explanation of the person's right to submit an appeal of the denial to the Board of Trustees or seek judicial review in the Oakland County Circuit Court;
  - An explanation of the right to receive attorneys' fees costs, and disbursements as well as actual or compensatory damages and punitive damages of \$1,000.00, should they prevail in Circuit Court.
  - The written notice of denial shall be signed by the FOIA Coordinator.
- I. The FOIA Coordinator and Legal Counsel shall promptly report to the Board of Trustees all Freedom of Information Act requests and responses.
- J. The Board of Trustees shall charge for the actual incremental cost of copying all public records or information sought by Freedom of Information Act requests, including the cost for copying, searching, reviewing, separating and duplicating

with respect thereto, and postage for mailing such copies to requestors to the extent allowable under the Michigan Freedom of Information Act.

The Michigan FOIA statute permits the Pension Plan to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor cost associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure.
- The costs of copying or duplication, not including labor, of paper copies of public records. This will include the cost for copies of records already on the Pension Plan's website, if the Pension Plan is asked to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This will include the cost for copies of records on the Pension Plan's website if the person asks for the System to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Pension Plan/City employee capable of doing the work, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The Pension Plan will add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in the labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit costs.
- Contracted labor costs will be charged at an hourly rate equal to 6 times the states minimum hourly wage (as of June 2015 this amount equals \$48.90).

Cost to provide non-paper physical media when requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonable economical costs for the non-paper media.
- The costs will only be assessed if the Pension Plan has the technological capability necessary to provide the public record in the requested format.

Cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ by 11) or legal (8 ½ by 14) sized paper will not exceed \$0.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The Pension Plan will provide records using double-sided printing if it is cost saving and available.

Cost to mail records will be based on the following requirements:

- The actual cost to mail public records. No cost will be made for expedited shipping or insurance unless specified by the requestor.

K. If the FOIA Coordinator does not respond to a written request in a timely manner, the Pension Plan must reduce the labor costs by 5% for each day the Pension Plan exceeds the time permitted under FOIA up to a 50% maximum reduction, if the Pension Plan's late response was willful and intentional, and the written request for records clearly identified that it was a FOIA request.

L. The Board of Trustees shall require a deposit of 1/2 the estimated cost thereof when the cost of any Freedom of Information Act request, based on a good-faith calculation, is estimated to exceed \$50.00.

M. If the requester has not paid in full for a previously granted request, the Board of Trustees will require a deposit of 100% of the estimated processing fee when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the Pension Plan's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Pension Plan to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the Pension Plan; and

- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The Board of Trustees will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the Pension Plan;
- The Pension Plan is subsequently paid in full for the prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the Pension Plan.

- N. The cost of the search for and copying of a public record may be waived or reduced if the Board of Trustees determines that a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public.

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the requestor submits an affidavit (sworn statement) stating that they are indigent and receiving specific public assistance, or if not receiving assistance, they state facts demonstrating an inability to pay because of indigence. An individual is not eligible to receive a waiver if the requestor has previously received discounted copies of public records from the Pension Plan twice during the calendar year; or they are requesting information in connection with other persons who are offering or providing payment to make the request.

- O. Pension Plan shall provide by appointment only, an opportunity to review public records or information to requestors of information whose Freedom of Information Act requests have been granted.
- P. The Board of Trustees shall grant promises of confidentiality in writing for trade secrets or commercial or financial information provided to it as allowed by applicable law to those providing such information, and that such information not be disclosed in response to any Freedom of Information Act requests.
- Q. When the Board determines that the privacy interest of members or beneficiaries outweighs the public's right to information, such information shall not be disclosed in response to Freedom of Information Act requests.
- R. A requestor may appeal the denial of a public record to the Board of Trustees by filing an appeal at the office of the Pension Plan. 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 Board of Trustees will be deemed to have received the written appeal on its first regularly scheduled meeting following the submission of the appeal. Within 10 business days following receipt of the appeal the Board of Trustees shall respond in writing by:

- Reversing the disclosure denial;
- Upholding the denial;
- Reverse the disclosure denial in part and uphold the denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Board shall respond to the appeal.

If the Board of Trustees fails to respond to a written appeal, or if it upholds the disclosure denial, the requestor may seek judicial review by commencing a civil action in Circuit Court. Regardless of whether or not a requestor files an appeal with the Board of Trustees, he or she may file a civil action in Oakland County Circuit Court within 180 days after the Pension Plan's final determination to deny the request.

If the requestor prevails in such an action, the court shall award reasonable attorneys' fees, costs and disbursements. If the Pension Plan prevails the court may award reasonable attorneys' fees, costs and disbursements. If the court determines that the Pension Plan has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Pension Plan to pay a civil fine of \$1,000.00 which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the requestor.

- S. If a requestor believes that the fee charged by the Pension Plan to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the Board of Trustees by submitting a written appeal for a fee reduction to the office of the Pension Plan. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

The Board of Trustees will be deemed to have received the written appeal to reduce the fee on its first regularly scheduled meeting following the submission of the appeal. Within 10 business days following receipt of the appeal the Board of Trustees shall respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination supporting the remaining fee;
- Upholding the fee and issue a written determination supporting the fee; or

- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Board shall respond to the appeal.

Within 45 days after receiving notice of the Board of Trustees' determination of an appeal, the requestor may commence a civil action in Oakland County Circuit Court for a fee reduction. If a civil action is commenced against the Pension Plan for an excess fee, the Pension Plan is not obligated to complete the processing of the written request until the court resolves the fee dispute.

An action shall not be filed in circuit court unless one of the following applies:

- The Pension Plan does not provide for appeals of fees;
- The Board of Trustees failed to respond to a written appeal, or
- The Board of Trustees issued a determination to a written appeal.

If a court determines that the Pension Plan required a fee that exceeds the amount permitted under this policy or Section 4 of the FOIA Act, the court shall reduce the fee to a permissible amount. If the requestor prevails in court by receiving a reduction of 50% or more of the total fee, the court may award attorneys' fees, costs and disbursements. If the court determines that the Pension Plan has arbitrarily and capriciously violated this act by charging an excess fee, the court shall order the Pension Plan to pay a civil fine of \$500.00 which shall be deposited into the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the requestor.

- T. The FOIA Coordinator shall keep a copy of all written requests for public records on file for at least one (1) year from the date of receipt and shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

FURTHER RESOLVED, that a copy of this resolution setting forth the Pension Plan's FOIA procedures and guidelines shall be provided, along with the summary of same, to all individuals who make a FOIA request for a public record from the Pension Plan.