FREEDOM OF INFORMATION ACT POLICY

1. **Purpose**

Act No. 442 of the Public Acts of 1976, as amended, commonly known as the Freedom of Information Act, requires that the City of Port Huron disseminate its public records in order to further the public policy of this State so that all persons are entitled to full and complete information regarding the affairs of this City and the official acts of those persons who represent the citizens of this City as public officials and public employees.

The City of Port Huron is authorized, pursuant to the provisions of Section 4 of said Act, to charge a fee for providing a copy of a public record and a fee for examining, reviewing, separating, and deleting exempt from nonexempt public records, subject to certain limitations and restrictions.

The City of Port Huron is required, by the provisions of said Act, to establish and publish procedures and guidelines to implement the provisions of the Act with respect to fees to be charged to the public.

2. **Policy**

A. Under the provisions of Section 4 of Act 442, there has been prepared a schedule of costs to be charged for mailing, photocopying, duplicating, and searching public records for the purpose of complying with requests made under the Freedom of Information Act; and said schedule of costs is filed in the Office of the City Clerk and is available to the public.

B. The costs to be charged under said schedule shall not exceed the following items:

1) Actual mailing expenses.
2) Actual incremental cost of duplication, publication, or photo duplication.
3) Actual labor expense connected with duplication, searching, examination, and review of public records, which labor costs shall not be charged at a rate in excess of the hourly wage of the lowest paid public body employee **capable** of retrieving the information necessary to comply with a request under this Act.

C. A copy of a public record shall be furnished without cost for the first $20.00 of the fee for each request to an individual who submits an affidavit stating that he is then receiving public assistance, or otherwise unable to pay the cost thereof because of indigence.

D. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in Section 14, unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and specifically identifies the nature of these unreasonably high costs. The fee for separating exempt from nonexempt material, if necessary to be charged, shall be limited to the incremental hourly salary expense of the lowest paid public body employee **capable** of doing the work.

E. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefitting the general public.

F. The schedule of charges to be made to the public shall annually be reviewed and published.

G. Section 6 of Public Act 442 of 1976, as amended, states that the public body shall designate an individual as the public body's FOIA coordinator who shall be responsible for accepting and processing requests for the public body's public records under this Act and shall be responsible for approving a denial under Section 5(4) and (5). Effective March 24, 1997, the Port Huron City Council designated Pauline M. Repp, City Clerk, as the FOIA Coordinator for the City of Port Huron.

This regulation supersedes Administrative Regulation No. 1-3, effective January 26, 1998

Appendix "A"- Schedule of Fees
Appendix "B"- Waiver of Fees
Appendix "C"- Overview - Freedom of Information Act (FOIA)
Appendix "D"- Policies and Procedures of Compliance with FOIA, including Form FOIA-1, FOIA-2, FOIA-3, and FOIA-4
Appendix "E"- Exceptions to the Freedom of Information Act
Appendix "F"- Public Information Sheet

**Appendix "A" through "F" supersede all those effective March 1982 through July 2001.

Appendix "A"
(Amended September 21, 2012)

SCHEDULE OF FEES

SERVICE	COST TO CITIZEN
Labor cost of searching and reviewing files to delete exempt materials:	First 10 minutes free. $24.32 per hour thereafter (charged in 10 minute increments of $4.05 if less than an hour)
Labor cost of monitoring public review of original files:	Same as above
Mailing Costs:	Actual Cost
Photocopying:	
One page, 8-l/2 x 14" maximum	25 cents
Two pages, 8-1/2 x 14" maximum	50 cents for both
Additional pages, 8-1/2" x 14" maximum	10 cents each
Labor costs	After the first 10 minutes, $24.32 per hour (charged in 10 minute increments of $4.05 if less than an hour)
DEPOSITS	One-half the cost of estimates over $50.00

In all instances, money must be received before copies are delivered or before searching and reviewing commences if a deposit is required. No services will be provided to persons who owe money to the City of Port Huron as a result of a prior request to review or receive copies of the City's public records.

In addition to above fees, each department shall develop a schedule of fees for providing the public with records pertaining to that department; i.e., codes, maps, accident reports, voter lists, etc. **A copy of said schedule of fees shall be filed with the Office of the City Clerk.**

Appendix "B"

WAIVER OF FEES

No fee will be charged:

1. If the request can be considered as primarily benefitting the general public; or

2. If the recipient is indigent. Indigence is assumed when a person is receiving public assistance or has an income below the federal poverty level. In cases of indigence, only the first $20 incurred from any one request would be waived.

Appendix "C"

OVERVIEW
FREEDOM OF INFORMATION ACT (FOIA)

The Freedom of Information Act took effect on April 12, 1977. The Act states that it is the public policy in Michigan that all persons are entitled to full and complete information regarding governmental decision-making, consistent with this act. The Act greatly expands the rights of citizens to obtain public records from public employees and provides for detailed procedures to be followed in making and responding to requests for information. An overview of the Act follows:

1. The Act covers the City itself and any board, commission, council, agency, or department of the City.

2. "Public record" means 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. These records are divided into two classes: those that are exempt from disclosure under Sec. 13 and those that are not exempt from disclosure under Sec. 13. Public record does not include computer software.

3. "Writing" means handwriting, typewriting, printing, photostating, 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.

4. "FOIA Coordinator" means an individual designated by a public body to accept and process requests for public records under this act.

5. This act does not require a public body to make a compilation, summary, or report of information, except as required in Sec. 11.

6. Upon a written request, a person has a right to inspect, copy or receive copies of a public record which is not declared exempt.

7. The person must be provided a reasonable opportunity and reasonable facilities to inspect public records. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with its duties.

8. A fee may be charged for providing a copy of a public record. The fee shall be limited to actual labor and copying costs (see Appendix "A" for fees).

Appendix "C"
Overview of FOIA - Continued

9. The City must respond to a request by providing the record within five (5) working days after the day the request is received unless otherwise agreed to in writing by the person making the request. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until one (1) business day after the electronic transmission is made. In responding, the City must do one of the following:

    a. A. Grant the request.

    b. Issue a written notice denying the request.

    c. Grant the request in part and issue a written notice to the requesting person denying the request in part.

    d. Issue a notice extending for not more than ten (10) business days the period during which the public body shall respond to the request (see Appendix "D"). There can be no more than one (1) notice of extension per request.

10. The FOIA Coordinator is charged with the responsibility of denying a request for information. An FOIA Coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial. The Police Chief is so designated with respect to police records.

    A written notice denying the request shall contain:

    a. An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

    b. A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying all or a portion of the request.

    c. A description of a public record or information on a public record that is separated or deleted under exempt status.

    d. A full explanation of the requesting person's rights for appeal. An appeal must be submitted in writing to the head of the public body stating the word "appeal" and identifying the reason or reasons for reversal of the denial <u>or</u> commence an action in the circuit court to compel the disclosure of the public records within 180 days after final determination to deny a request.

Appendix "C"
Overview of FOIA - Continued

e. If a person prevails in an action commenced, the court shall award reasonable attorneys' fees, costs, and disbursements. If the circuit court determines that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual.

11. There are certain exceptions to the act where requests for information may be denied in whole or in part. Those that exceptions which are general in nature are listed in Appendix "E." If the proposed denial does not fall within one of the stated reasons, the City Attorney should be consulted to determine if any other statutory reason is appropriate.

Appendix "D"

POLICIES AND PROCEDURES
TO COMPLY WITH FREEDOM OF INFORMATION ACT

CERTAIN DOCUMENTS WILL NOT BE SUBJECT TO THE FOLLOWING REGULATIONS. EACH DEPARTMENT WILL POST A LIST OF THOSE ITEMS WHICH MAY BE DISPENSED TO THE PUBLIC WITHOUT ADDITIONAL PAPERWORK. CHARGES FOR THESE ITEMS WILL BE THE SAME AS FOR ALL OTHERS. A LISTING OF ALL SUCH ITEMS SHALL BE FILED IN THE CITY CLERK'S OFFICE.

1. **Put the Request in Writing**

   Requests for materials shall be made in writing and through the City Clerk's Office. The City Clerk has been designated the Freedom of Information Coordinator by the City Council. If a request is made in person, have them fill out a Request for Disclosure of Public Record (Form FOIA-1) and have them sign it. Make a copy of the completed form for the person requesting materials. Put the date and time received on the form immediately. If it is estimated that the request will cost more than $50, including copying and labor charges, have the person check the box requesting a fee estimate and one will be sent to them. Before compiling the material, they will then need to pay a deposit equal to one half the estimated cost.

2. **Indigence Forms**

   The first $20 of any one request will be waived if the requesting party is indigent. Indigence forms (FOIA-4) are in the City Clerk's Office. Persons are automatically considered indigent if they are receiving public assistance or if their incomes are below the federal poverty level.

3. **Determining Costs**

   Use the fee schedule to estimate charges (Appendix "A"). Note that labor charges do not begin until after the first ten (10) minutes for searching and reviewing and/or monitoring, or after the first tenth of an hour (six minutes) for copying.

4. **Reply to Request - Notification Deadlines**

   The requesting party must be notified within five (5) business days as to whether the request will be granted, denied in part, or denied totally. A notice (FOIA-2) extending this deadline ten (10) additional business days can be issued to the requesting person if the request requires City staff to search for or review a voluminous amount of separate and distinct records, or if the records must be collected from numerous other offices. Failure to reply to a request constitutes a denial of that request.

Appendix "D"
FOIA-1

REQUEST FOR PUBLIC RECORD

1. **Date of Request:** _____ **Time:** _____

2. **Information requested by:**
   Name: _____
   Address: _____
   City, State, Zip: _____
   E-mail address: _____
   Phone # where you can be reached: _____

3. **Description of public record(s) being requested** (Use additional sheet if necessary):
   _____
   _____
   _____

4. **Do you wish to:** _____ Receive copy -OR- _____ Review / Inspect copy

5. **Select one of the following:**
   ____ I request a fee estimate be provided to me within 3 days and agree that the City need not respond to my request until 5 days after I receive the fee estimate.
   ____ I have examined the fee schedule and agree to pay those charges and waive any right to a fee estimate.
   ____ I agree that the public body need not respond to my request until _____.

6. **Information or questions:** Contact the Office of the City Clerk, 100 McMorran Boulevard, Port Huron, Michigan 48060 or call 810-984-9725. Return completed form to the Clerk's office or fax to 810-982-7872.

7. **Signature of person requesting information:** _____

(Below for office use only)

Due date for info.: _____
Departments copied: _____
_____
Date requestor was notified: _____
Date material picked up: _____

Fees (indigent, no cost for first $20):
Deposit amt. (1/2 req'd if over $50): $ _____
Copy charges: $ _____
Labor charges: $ _____
Mailing charges: $ _____
TOTAL: $ _____

Appendix "D"
FOIA-2

NOTICE OF TEN DAY EXTENSION

To: Name: _____

Address: _____

City/State/Zip: _____

Pursuant to Section 5(2)d of the Freedom of Information Act (FOIA) statute, the time for responding to your request for disclosure of public records dated _____ has been extended to the 15th working day following the date of your request, which is _____ for the following reason(s):

_____ The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

_____ The need to collect the requested public records from numerous other offices.

_____
FOIA Coordinator

_____
Dated

Appendix "D"
FOIA-3

NOTICE OF DENIAL OF REQUEST FOR DISCLOSURE OF INFORMATION

Name: _____

Address: _____

City/State/Zip: _____

Date of Request: _____

Your request for disclosure of information has been denied (in whole) or (in part), pursuant to Section 13 of the Freedom of Information Act (FOIA), for one or more of the following reasons:

____ A public record does not exist under the name given.

____ Requested record(s) are of a personal nature and the disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

____ Requested record(s) are investigating records compiled for law enforcement purposes.

____ Requested record(s) are trade secrets or commercial or financial information voluntarily provided to an agency for developing governmental policy.

____ Requested record(s) are subject to attorney-client privilege.

____ Requested record(s) are subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

____ Requested record(s) are a bid or proposal to enter into a contract or agreement prior to the time established for submission or public opening.

____ Requested record(s) are appraisals of real property to be acquired prior to an agreement for purchase, or less than three (3) years after the appraisal date.

____ Requested record(s) are communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final determination of policy or action.

Appendix "D"
FOIA-3
Notice of Denial - Continued

____ Requested record(s) are records of law enforcement communication codes, or plans for deployment of law enforcement personnel.

____ Requested record(s) are records of a law enforcement agency and identify an informer, identify an undercover officer, disclose personal address or family members, disclose operations, reveal contents of manuals, endanger life of officers, disclose personnel records of officers, or identify residences agency is requested to check on.

____ Requested record(s) are records of security measures.

____ Requested record(s) are information relating to a civil action in which the requesting party and the public body are parties.

____ Requested record(s) would disclose the social security number of an individual.

____ Other: _____

_____

If your request for record(s) is denied, you may submit a written appeal, specifically stating "appeal" and stating the reasons for appeal, to the attention of the Mayor, ***or*** *seek judicial review under Section 10 of the Act within 180 days after the public body's final determination. Within ten (10) days of receiving a request for an appeal, the Mayor shall: a) reverse the denial; b) issue a written notice upholding the denial; c) reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part; or d) issue a notice extending by ten (10) business days the time to decide the appeal. (Note: If a board or commission is the head of the public body it is not considered to have received a written appeal until the first regularly scheduled meeting following submission of the written appeal.)*

If after judicial review, the Circuit Court determines that the public body has not complied fully with the disclosure requirements, the Court shall award reasonable attorneys' fees, costs, and disbursements. If the Court determines that the public body has arbitrarily and capriciously violated the Act, the Court shall award punitive damages in the amount of $500.00.

A copy of this request will be kept on file for no less than one (1) year.

_____
FOIA Coordinator Dated

Appendix "D"
FOIA-4

AFFIDAVIT OF INDIGENCE

1. **Personal History:**

Name: _____
Address: _____
City/State/Zip: _____ Telephone: _____
Age: ____ Marital Status: Single____ Married____ Divorced____ Separated_____ Widowed_____
Number of dependents: _____ Ages of dependents: _____
Student? _____ Where: _____ FT _____ PT _____

2. **Employment History:**

Present employer: _____ Date of hire: _____
Address: _____ City/State/Zip: _____
-OR-
Most recent employer: _____ Date terminated: _____
Address: _____ City/State/Zip: _____
Reason: _____

3. **Income and Expenses (Monthly):**

Your monthly income (including child support and/or alimony): _____
Your spouse's monthly income: _____
Your monthly expenses (rent/mortgage, car payment, utilities, groceries, installment payments, etc.):
_____
Are you on public assistance? _____

4. I DO HEREBY AFFIRM AND SAY THAT ALL OF THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT AND THAT I AM CONSIDERED TO BE INDIGENT.

_____
Signature

_____
Dated

Appendix "E"

EXCEPTIONS TO THE FREEDOM OF INFORMATION ACT

1. Information which is of a personal nature where the disclosure would constitute an invasion of that individual's privacy. Information of a personal nature must be given to the person whom it concerns, or that person's duly authorized agent.

2. Investigating records compiled for law enforcement purposes, to a limited extent.

3. A public record which if disclosed would prejudice a public body's ability to maintain the physical security of custodial institutions.

4. Trade secrets or commercial or financial information provided to the City for use in developing governmental policy if the information was provided upon a promise of confidentiality. Such information should not be received by the City unless the promise of confidentiality is authorized.

5. Information subject to attorney-client privilege, physician-patient privilege, or other similar privileges recognized by statute.

6. A bid or proposal by a person to enter into a contract with the City up until the time of the opening of bids or until the time for the receipt of bids has expired.

7. Appraisals of real property to be acquired by the City up until the time an agreement is entered into to purchase or 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet been terminated.

8. Test questions and other data necessary for administering licensing or employment programs. This information must be disclosed; however, if the public interest in disclosure outweighs the public interest in non-disclosure.

9. Requested record(s) are of a personal nature and the disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

10. Requested record(s) are communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final determination of policy or action.

11. Requested record(s) are records of law enforcement communication codes, or plans for deployment of law enforcement personnel.

Exceptions to FOIA - Continued

12. Requested record(s) are records of a law enforcement agency and identify an informer, identify an undercover officer, disclose personal address or family members, disclose operations, reveal contents of manuals, endanger life of officers, disclose personnel records of officers, or identify residences agency is requested to check on.

13. Requested record(s) are information relating to a civil action in which the requesting party and the public body are parties.

14. Requested record(s) would disclose the social security number of an individual.

*For a complete list see Section 13 of the Act.

Appendix "F"

PUBLIC INFORMATION SHEET

The Freedom of Information Act states that a public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. To this end, the following policies and procedures have been established:

1. Requests to review or obtain copies of materials shall be mailed or presented in person in writing to the City Clerk's Office. Office hours are 8:00 a.m. to 4:30 p.m.

2. Your cost will be limited to the actual costs incurred by the City in filling your request. No paperwork will be required for requests to review or obtain copies of specific documents listed in each department. A request form must be filled out for other documents and stamped with the date and time the request was made. If it is estimated that your request will cost more than $50, a deposit of one half the estimated cost must be paid before searching and reviewing documents commences.

3. Certain information is exempt from disclosure under the Freedom of Information Act. You will receive a notice as to whether your request will be approved, denied in part, or denied totally within five (5) business days of the time your original request was received. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until one (1) business day after the electronic transmission is made.

4. The City FOIA coordinator will issue a notice extending for not more than ten (10) business days the period necessary to respond to your request if it is determined that your request cannot be filled in the first five (5) days due to its complexity or size.

5. If your request is approved, you will be notified as to when you can either review materials or obtain copies. All charges incurred must be paid before copies are obtained. If you wish to simply review and make notes from non-original documents, you will be provided a reasonable place in which to do this. If you wish to review original materials such as voter registration cards, assessment notices, tax bills, water bills, etc., a staff member will be assigned to monitor your review to insure that the integrity of all material is maintained. A monitor may be required at other times at the City's discretion. At the end of your review, you will be required to pay any labor costs incurred for monitoring.

6. If you are indigent, the first $20 incurred for any single request you make will be waived. You will be required to fill out a form indicating either that you are on public assistance or that your income is below the federal poverty level.

Appendix "F"
Public Information Sheet - Continued

7. If your request is denied, you will be issued a notice explaining the reason for the denial. The City is not required to generate a summary or report from its files, nor is it required to create a new record under this law. If you are not satisfied with the justification for a denial, you may do one of the following: a) submit to the Mayor's attention, a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial; or b) commence an action in circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.