

5520 POLICY – Freedom of Information Act (FOIA)

- I. The Board recognizes the public policy of this state is that all persons, with the exception of persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of the Utica Community Schools and the official acts of those who represent them as elected officials and public employees.

This statement of policy shall be implemented as set forth in the procedure and in compliance with state and federal statutes, including Public Act No. 442 of the Michigan Public Acts of 1976, the “Freedom of Information Act” M.C.L. 15.231 et seq. (“the Act”), as amended.

Except as expressly provided in the Act, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

Legal Reference: P.A. 442 of 1976, as amended

Policy

Adopted: 4/9/90

Revised: 6/23/97

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Revised: 8/24/15

Board of Education Utica Community Schools

5520 RULES AND REGULATIONS - Freedom of Information Act (FOIA)

The District's public records, as defined under the Freedom of Information Act, are available for public inspection and/or copying in accordance with the following administrative Rules and Regulations. Exemptions are specified in M.C.L. 15.243.

Procedure

- I. All Freedom of Information requests to the Utica Community Schools shall be in writing. Requests may take the form of any written communication, including electronic mail and facsimile transmissions. Requests are made to Utica Community Schools, Administrative Service Center, Attention: FOIA Coordinator, 11303 Greendale, Sterling Heights, MI 48312. Requests may also be submitted via email to FOIAcoordinator@uticak12.org or via facsimile to (586) 797-1101.

If a requesting person is disabled, either temporarily or permanently, to the extent that he or she is unable to make a written request, District personnel must write out the request for the citizen as an accommodation under the Americans with Disabilities Act. Please call (586) 797-1000 for assistance.

Under the Freedom of Information Act, the Superintendent is the Freedom of Information Coordinator. The Superintendent may delegate authority and designate others to act as the FOIA Coordinator in accepting and processing requests for public records and in approving or denying a request in whole or in part and for any other reason permitted by law.

- II. Utica Community Schools shall keep a copy of all written requests for public records on file for no less than one year.
- III. Utica Community Schools shall respond to a request for a public record in compliance with Public Act No. 442 of the Michigan Public Acts of 1976, the "Freedom of Information Act" M.C.L. 15.231 et seq. ("the Act"), as amended by doing one of the following:
 - A. Granting the request.
 - B. Issuing a written notice to the requesting person denying the request.
 - C. Granting the request in part and issuing a written notice to the requesting person denying the request in part.



- D. Extending for no more than 10 business days the period during which the District will respond to the request. The reasons for the extension should be included in the extension notice. The estimated date by which the District will send its final determination must also be included.

Every FOIA request should receive one of the four (4) responses set forth above. Failure to respond could be considered a denial by the courts, which may require fines and penalties be imposed against the District.

Every response to a FOIA request should include a link to the Utica Community Schools website, where these Rules and Regulations and a corresponding Public Summary will be kept publicly available.

Unless the requesting person agrees to a different timeframe in writing, the District must respond to a request within five (5) business days after receiving the request. The time period allowed for responding begins when the request is received. Electronic transmissions are considered received on the next business day after the transmission was sent. However, if an e-mail request is filtered into a junk mail box or some other spam folder, it will be considered received one (1) day after it is found. For purposes of this policy, any e-mail requests that are sent to or discovered in an e-mail account of a former employee or any other account that has been or should have been deactivated will be deemed to have been found in a junk mail box or spam folder. All written requests should be time-stamped upon receipt. The date of the request and the date it is discovered should be documented on the response form.

- IV. Denials may be issued when the requested record, as described, does not exist or cannot reasonably be located based on the description given by the requester.

The FOIA contains exemptions for a variety of records and information which may be withheld from disclosure. In addition, a number of state and federal laws prohibit disclosure of certain information, such as copyrighted materials, school and student records, non-public court records, privileged information, personal information, and others.

Utica Community Schools need not produce records which have nothing to do with the District's official functions, need not comply with vague requests such as requests for "all records," and need not compile or summarize information or otherwise create new public records.

A written notice denying a request for public record in whole or in part shall contain:

- A. An explanation of the basis for the determination that the public record, or portion of it, is exempt from disclosure, if an exemption is the reason for denial.



- B. A certification that the public record does not exist (if applicable).
 - C. A description of a public record that is not being disclosed or information on a public record that is deleted/redacted.
 - D. A full explanation of the requesting person's right to appeal a denial to the Superintendent or seek judicial review of a denial.
 - E. Notice of the right to receive attorney fees and damages as provided in the Act, if a court orders disclosure of all or part of a public record.
 - F. Notice of the Utica Community Schools website address where these Rules and Regulations and the Public Summary can be found.
- V. The FOIA Coordinator or designee is responsible for the denial of the request and shall sign the written notice of denial.
- VI. If Utica Community Schools makes a final determination to deny in whole or in part a request to inspect or receive a copy of public record or portion of that public record, the requesting person may do either of the following:
- A. Commence an action in circuit court, pursuant to Section 10 of the Act.
 - B. Appeal the denial to the Superintendent as follows:
 - 1. Submit to the Superintendent a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial. The Superintendent is designated as the "head of the public body" under the FOIA and is the only employee who is authorized to respond to an appeal.
 - 2. Within ten (10) business days after receiving a written appeal of a denial or partial denial, the Superintendent shall do one of the following:
 - a. Reverse the disclosure denial.
 - b. Issue a written notice to the requesting person upholding the disclosure denial.
 - c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.



- d. Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the Superintendent will respond to the written appeal. The Superintendent may not issue more than one (1) notice of extension for a particular written appeal.
 3. If the Superintendent fails to respond to a written appeal, or if the Superintendent upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under the Act.
- VII. In addition to, or separately from, appealing a denial or partial denial, a requester may also appeal a fee that is charged by the District.
 - A. A requester may only challenge a fee as follows:
 1. Submit to the Superintendent a written appeal that specifically states the word "appeal" and identifies the reason or reasons for why the required fee exceeds the amount permitted under the District's policies and/or the FOIA. The Superintendent is designated as the "head of the public body" under the FOIA and is the only employee who is authorized to respond to an appeal.
 2. Within ten (10) business days after receiving a written appeal of a fee, the Superintendent shall do one of the following:
 - a. Waive the fee that is being appealed.
 - b. Reduce the fee that is being appealed and issue a written determination to the requesting person indicating the specific basis under the Act that supports the remaining fee.
 - c. Uphold the fee that is being appealed and issue a written determination to the requesting person indicating the specific basis under the Act that supports the remaining fee.
 - d. Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the Superintendent will respond to the written appeal. The Superintendent may not issue more than one (1) notice of extension for a particular written appeal.



3. The Superintendent's determination must include a certification that the statements in the determination are accurate and that the fee complies with the District's publicly available Rules and Regulations and Section 4 of the FOIA.
 4. If the Superintendent fails to respond to a written appeal, or if the Superintendent upholds all or a portion of the fee that is the subject of the written appeal, the requesting person may seek judicial review of the appeal determination by commencing an action in circuit court under the Act.
- VIII. Prior to disclosing student directory information, the Utica Community Schools requires the requester to execute an affidavit stating that directory information provided under the Freedom of Information Act is consistent with the educational mission of the Utica Community Schools and is beneficial to the affected students and that the directory information will not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. (Form #1 - Affidavit).
- IX. If a requesting person is granted the right to inspect requested records, he or she must be given a reasonable opportunity for inspection and examination of the record(s) along with reasonable facilities for doing so during usual business hours. The FOIA Coordinator or designee must supervise the inspection or take such other measures as will protect the District's public records and prevent excessive and unreasonable interference with the day-to-day discharge of municipal functions. State law prohibits the use of pen and ink (MCL 750.492) in making copies or notes of records and files and it does not address photography; therefore, only a pencil will be permitted and photography of records that would otherwise be released without redaction (or as already redacted) will be allowed, but no other photography will be permitted.

The following rules shall apply to all requests for inspection of records:

1. Any person examining public records shall bring to the examination only an erasable pencil with which to make notes or lists, etc. No pens or indelible writing instruments are allowed. No notes or writing of any kind shall be made on the documents themselves.
2. A District staff member must be present at all times during the inspection of District records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction.
3. Original documents may be removed from and replaced in District files only by authorized District staff.



4. A requester may not remove records or files from the area provided for inspection unless those documents are copied specifically for the requester by authorized District staff.
5. The FOIA Coordinator will determine, on a case-by-case basis, whether a requester may inspect an original public record, or only a copy of the record. A fee may be charged for necessary copies that are made in order to enable public inspection of records. Situations where original records are likely to require copying prior to inspection include the following:
 - a) The records include exempt information that must be redacted.
 - b) The records are old or delicate, or contain information that could not easily be replicated.
 - c) The records are in digital format or are part of a database not available for public inspection.
 - d) Providing copies would be less disruptive to the performance of District functions than providing the necessary staff oversight required for inspection of original records.

A person requesting to inspect District records will be assigned an appointment by the FOIA Coordinator in the FOIA response. Appointments will occur during the District's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator. Appointments will typically occur 10 or more business days after the inspection request is received, to allow District staff to make appropriate arrangements to find, review, copy, and redact the records (if applicable), reserve appropriate facilities for the inspection, arrange for proper protection of any original records, and coordinate regular District functions while the inspection occurs.

The FOIA Coordinator will make reasonable efforts to allow a requester to inspect records for up to three hours per appointment; provided, however, that inspections will be cut short, postponed, or rescheduled when necessary to avoid unreasonable interference with the District staff's performance of their primary functions.

Before the inspection and examination begins, the identity and contact information of the requester shall be confirmed. The fees authorized by the



FOIA should then be estimated, itemized, and presented to the requester so that the requester understands the approximate cost that will be charged at the conclusion of the inspection and examination. If it reasonably appears that the inspection request will involve fees greater than \$50.00, a deposit of ½ the estimated total fee should be required prior to allowing the inspection and examination. At the end of the inspection and examination, the itemized fees shall be updated, finalized, and presented to the requester for immediate payment at that time. Any requester who fails to pay shall be invoiced by the District and shall be subject to the “delinquent payer” rules set forth below.

- X. The FOIA permits persons to request a subscription, valid for up to six months and renewable, to future issuances of public records created on a regular basis, *i.e.*, agendas and minutes of meetings. A listing of the requester's name, address, record subscribed to, charge, and expiration date of the subscription shall be maintained by the person issuing the record.
- XI. Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records. The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because release of the record(s) can be considered as primarily benefiting the general public.

The following fees shall be charged and paid to Utica Community Schools by the requester:

- A. Labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request.
 - 1. Labor costs must be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
 - 2. Labor costs do not apply to written requests that are denied or verbal requests that are granted.
 - 3. Labor costs for search, examination, and review will not be charged unless failure to charge would result in unreasonably high costs to the District because of the nature of the request in the particular instance. Unreasonably high costs will be deemed to occur at the point when an employee spends 15 minutes or more to search for, locate, and examine the requested record(s) as a result of receiving and fulfilling a granted written request.



- B. Labor costs directly associated with the separating and deleting of exempt information from nonexempt information (known as “redacting”).
1. Labor costs must be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
 2. Labor costs for redacting do not apply to written requests that are denied or verbal requests that are granted.
 3. If no District employee is able to review and redact any or all of the requested records, the FOIA coordinator may ask the District’s legal counsel to conduct the redaction. The attorney’s time shall be billed as a labor cost at a rate of 6 times the Michigan minimum wage.
 4. Labor costs for redaction will not be charged if the FOIA coordinator or an employee in that department of the District knows or has reason to know that a redacted version of the same requested record is still in the District’s possession.
 5. Labor costs for redaction will not be charged unless failure to charge would result in unreasonably high costs to the District because of the nature of the request in the particular instance. Unreasonably high costs will be deemed to occur at the point when an employee or outside contractor spends 15 minutes or more to redact the requested record(s).
- C. The actual and most reasonably economical cost of the media utilized to provide copies of public records to a requester. A requester may stipulate that the requested records be provided on nonpaper physical media or via electronic transmission, and the stipulation must be honored unless the District lacks the technological capability necessary to do so. In order to ensure the integrity and security of the District’s technological infrastructure, the District will procure any requested non-paper media and will not accept or utilize non-paper media from the requester.
- D. The actual total incremental cost of necessary duplication or publication for paper copies of public records provided to the requester, calculated as a total cost per sheet. The law limits the District’s copy charge to a maximum of \$0.10 per page.
1. Exception: The actual cost may be charged for paper of a size different than letter or legal size.



2. All copies must be double-sided, if it will save on costs and if it is possible to do so, unless the requester stipulates to single-sided copies.
3. Copy costs have been established as follows:
 - a. 8 ½" x 11" \$.10 b&w / \$.10 color
 - b. 8 ½" x 14" .10 b&w / \$.10 color
 - c. 11" x 17" .15 b&w /color
 - d. Information requested on labels, such as but not limited to, mailing labels (8 ½" x 11" page): \$3.00 / sheet
- E. The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requester on nonpaper physical media or through the internet or other electronic means as stipulated by the requester.
 1. Labor costs for this category of work (making the copies) shall be estimated and charged in increments of 6 minutes, with all partial time increments to be rounded down.
- F. Actual mailing costs, including the cost for envelopes or other containers used for mailing copies of the public records requested. In instances when postal delivery confirmation is procured, the actual mailing costs will include the least expensive form of such confirmation.

These costs may be imposed, if applicable, even when a requester does not actually receive copies, but instead requests the opportunity to review the requested records.

Employees should keep track of the amount of time they spend on each request in increments of 15 minutes, rounding down if the final increment is less than 15 minutes, except the time spent actually making copies (using any media) should be kept in increments of 6 minutes, also rounding down if the final increment is less than 6 minutes. Regardless of which employee fulfilled the request, the charge for labor shall only reflect the hourly wage of the lowest paid District employee capable of performing each task (finding the records, redacting the records, and copying the records). That charge should then be multiplied by the fringe benefit multiplier (different multipliers may apply to different employee categories) in order to recoup the District's fringe benefit costs up to 50% or the actual fringe benefit costs, whichever is less. Overtime wages may not be used to calculate the fringe benefit multiplier. However, overtime wages may be recovered as a labor cost if the requester stipulates to being charged for overtime.



- XII. When preparing the District's response, the prescribed fee itemization form must be utilized. All copies of public records should be mailed to the requesting person unless personally retrieved by the requesting person after being notified of their availability. For requests involving fees greater than \$50.00, a deposit of ½ the estimated total fee should be required prior to beginning work on retrieving the requested documents. The deposit request must be itemized with estimates of each fee component (see below) and must include a "best efforts estimate" regarding the time frame it will take to provide the records to the requester. The time frame estimate must be made in good faith. It is not binding, but all other requirements in the FOIA remain in effect.
- XIII. A copy of a public record must be furnished without charge for the first \$20.00 of the fee of each request to an individual who submits an affidavit that he or she is indigent and receiving public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigency. All costs over \$20.00 may be charged to the requester. A requester may only utilize this indigency option twice during any calendar year, so all indigency fee waivers should be tracked and recorded. An individual is not eligible for the indigency discount if he or she is requesting information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request.
- XIV. Certain nonprofit organizations will not be charged for fulfilling their FOIA requests. These organizations are limited to those formally designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request is made directly on behalf of the organization or its clients, the request is made for a reason consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, and the request is accompanied by documentation of its designation by the State.
- XV. If a requested public record is available to the general public on the District's website, the FOIA Coordinator must notify the requester in the District's written response that all or a portion of the requested information is available on the District's website. The specific website address where the information can be found must also be provided. If a requester still wants copies of those records after being notified of their availability online, the requester may be charged for the records in accordance with the six fee components itemized above, except the fringe multiplier may be greater than 50% if the District has calculated the fringe benefit multiplier to be greater than 50%.
- XVI. The costs charged for responses that are late will be reduced by 5% for each day that the response is late, with a maximum 50% reduction. The reduction will only be applied if the lateness was willful and intentional, or the written request



included language that should have made it apparent that the request was a FOIA request, such as including a request for information within the first 250 words, or specific mention of “Freedom of Information Act,” “FOIA,” “Copy,” or a recognizable misspelling of such, or legal code references to the FOIA such as “MCL 15.231,” on the front of an envelope, in the subject line of the request, or on the cover page of a fax.

- XVII. If a requester does not pay for requested records, a deposit of 100% of the estimated cost may be required from the requester before filling any subsequent written requests from that requester, so long as the final fee for the unpaid request did not exceed 105% of the estimated fee, and so long as the District still has the records requested in the prior request, and so long as the deadlines of the FOIA were met when responding to the prior request, and so long as 90 days or more have passed since notifying the requester in writing that the records were available, and so long as the requester cannot show proof that the prior bill was paid, and so long as the new estimated fee deposit is calculated as required by the FOIA (using the six fee components listed above).

Exceptions: To avoid the 100% deposit requirement, the requester may pay the prior bill in full. In addition, the 100% deposit requirement will not be imposed if more than 365 days have passed since the prior written request was made.

- XVIII. The FOIA Coordinator shall use the District’s standard form for the required Detailed Itemization of Fees.

Legal Reference: PA. 442 of 1976, as amended

Rules and Regulations

Adopted: 4/9/90

Revised: 6/23/97

Revised: 2/2005

Revised 7/1/2015

Superintendent of Schools





5520 FORM 2 - FREEDOM OF INFORMATION ACT FEE ITEMIZATION

Fringe Benefit Multiplier x Applicable Hourly Rate _____ % x \$ _____ (Search) _____ % x \$ _____ (Redaction) _____ % x \$ _____ (Duplication)	Total Labor Charges Per Hour \$ _____ per hour for the search \$ _____ per hour for redaction \$ _____ per hour for duplication	
Labor costs for searching for, locating, and examining public records in order to fulfill a granted written request	_____ hours x \$ _____ per hour <small>(Increments of ¼ of an hour, rounded down)</small>	\$ _____ plus
If done by a District employee, labor costs directly associated with separating and deleting exempt information from nonexempt information ("redaction")	_____ hours x \$ _____ per hour <small>(Increments of ¼ of an hour, rounded down)</small>	\$ _____ plus
If done by a contractor, labor costs directly associated with separating and deleting exempt information from nonexempt information ("redaction")	_____ hours x \$ _____ per hour Contractor: _____ <small>(Increments of ¼ of an hour, rounded down, hourly rate not to exceed 6 times minimum wage)</small>	\$ _____ plus
Labor costs directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records onto nonpaper physical media or through other electronic means	_____ hours x \$ _____ per hour <small>(Increments of .1 of an hour, rounded down)</small>	\$ _____ plus
Actual cost of any media	_____ media x \$ _____ per media _____ media x \$ _____ per media	\$ _____ plus
Actual total incremental cost of necessary duplication or publication for paper copies of public records, not including labor (8½ x 11 and/or 8½ x 14 only)	_____ sheets x \$0.10 per b&w sheet _____ sheets x \$0.10 per color sheet	\$ _____ plus
Actual total incremental cost of necessary duplication or publication for paper copies of public records, not including labor (<u>not</u> 8½ x 11 or 8½ x 14)	_____ sheets x \$ _____ per b&w sheet _____ sheets x \$ _____ per color sheet	\$ _____ plus
Actual cost of mailing (may include least expensive form of postal delivery confirmation)	<input type="checkbox"/> Applicable <input type="checkbox"/> Not Applicable	\$ _____ Equals
Subtotal		\$ _____ minus
Indigency cost waiver (first \$20) (affidavit provided)	<input type="checkbox"/> Applicable <input type="checkbox"/> Not Applicable	(\$ _____) minus
State-designated non-profit agency waiver	<input type="checkbox"/> Applicable <input type="checkbox"/> Not Applicable	(\$ _____) minus
Good Faith Deposit	<input type="checkbox"/> Paid	(\$ _____) equals
Total Owed (Payable to Utica Community Schools)		\$ _____

Date: _____

FOIA Coordinator or Designee

Request Identifier and Date Received