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## **Summary of Freedom of Information Act Procedures**

This is a summary of procedures relevant to you, the general public, on how to make a Freedom of Information Act (FOIA) request to the Central County Transportation Authority (CCTA) or Kalamazoo County Transportation Authority (KCTA). METRO is the operating entity of the CCTA and the KCTA. This summary also explains how to understand METRO's responses to FOIA requests, METRO's deposit requirements, as well as METRO's fee calculations and your appeal rights.

### **How Does an Individual Make a Written FOIA Request?**

A FOIA request must be made in writing and directed to the attention of the METRO FOIA Officer at [metrofoia@kmetro.com](mailto:metrofoia@kmetro.com) or FOIA Officer, c/o METRO, 530 North Rose Street, Kalamazoo, Michigan 49007. The request must contain the requestor's name, address and contact information, email or both. If request is submitted by agent it must contain agent's contact information.

### **How Detailed Must the Request Be?**

The FOIA request for records must be specific enough to identify the records wanted. METRO may deny the request if it requires creation of a new public record or to make a compilation, summary, or report of information.

### **Must the Written Request Specifically Mention FOIA?**

No, but METRO encourages the mention of "FOIA" in the title, subject line, or first sentence of the request. The new law relieves METRO from some duties if the request does not:

- Convey a request for information within the first 250 words of the body of a letter, facsimile, e-mail or e-mail attachment; or
- Specifically include on the front of the envelope, or in the subject line of the letter, e-mail, or facsimile cover page, either the appropriate legal code reference for the FOIA statute, or the words, characters, or abbreviations for any of the following (or a recognizable misspelling): "freedom of information", "information", "FOIA", or "copy".

Here are the two consequences if the request does not do either of the above:

- METRO is excused from FOIA's rule that we reduce our fees for every day that we are late responding to a request. Otherwise, METRO must reduce its fees by 5% for each day METRO is late, with a maximum reduction of 50% of our fee.
- METRO's failure to respond within FOIA's deadline will not be treated as a denial of the request, meaning the individual would not be able to appeal at that time.

## **How Quickly Must METRO Respond?**

Within five business days after receiving the request, the METRO FOIA Officer will respond by:

- Granting the request;
- Denying the request;
- Granting the request in part and denying the request in part; or
- Issuing a notice extending, for up to ten business days (not calendar days), the period during which METRO will respond to the request.

If METRO sends a notice extending its time to respond, it must specify the reasons for the extension and the date by which a response will be issued.

## **When Does the Time Period for Responding Begin?**

The time period begins when the METRO FOIA Officer receives the request. A request made by facsimile, electronic mail (e-mail), or other electronic transmission is not treated as received until one business day after the electronic transmission is made. However, if the e-mail request is delivered to "spam" or its "junk-mail" folder, the request is not treated as received until one day after METRO first becomes aware of the written request.

## **Must METRO Respond to an Oral FOIA Request?**

No. If an oral request is made to one of its employees for information METRO believes is available on its website, that employee must, where practicable and to the best of that employee's knowledge, inform the individual of the METRO website address.

## **Must METRO Respond if the Requested Records are Available on its Website?**

Requested information being on its website does not excuse METRO from responding to the request. If the METRO FOIA officer knows or has reason to know that requested information is available on its website, he/she will provide a response and will include a specific webpage address, if practical.

## **What Fee May METRO Charge for Responding to a FOIA Request?**

METRO may charge a fee for providing a requested copy and for copying necessary for a requested inspection. The fee is limited to actual costs that are within one of the six categories itemized on its fee itemization form. METRO may require the full payment before delivering the requested records.

**METRO will generally not charge for requests if the total allowable fee would be less than \$20. Also METRO will not charge a fee if all of the requested records are exempt from disclosure.**

For any material on the METRO website, METRO may not charge a fee for separating and deleting exempt information from non-exempt information. METRO will itemize charges separately for requested records that are available on its website from those that are not. METRO will also inform you of the additional charge to receive copies of records available on our website. If the individual still wants paper or electronic copies of records available on its website, METRO must provide those copies but it may charge a fringe benefit multiplier on labor costs that is greater than the 50% limitation that the law otherwise imposes.

### **Is Anyone Exempt from Having to Pay Those Fees?**

Yes, in part. METRO may not charge a fee if the individual submits an affidavit stating indigency and are receiving specific public assistance or, if not receiving public assistance, state facts showing inability to pay a cost because of indigency. This exemption, however, applies only to the first \$20.00 of a fee.

Eligibility for this exemption, however, does not apply if either of the following are relevant:

- Discounted copies have been received twice during the same calendar year, or
- The requested information is in conjunction with outside parties who are offering or providing payment or other value for working the request. METRO may require that the affidavit states that the request is not being made in this way.
- If METRO believes the individual is not eligible for a requested discount, METRO must inform the individual of the specific reason for its conclusion.

This exemption applies also to a nonprofit organization designated by the State of Michigan to carry out activities under Subtitle C of the state's developmental disabilities, assistance and bill of rights act and the protection and advocacy for individuals with mental illness act.

But the discount for such a nonprofit organization applies only if the request is (a) made directly on behalf of that organization or its clients, (b) made for a reason wholly consistent with the organization's mission, and (c) is accompanied by documentation, if so requested by CCTA/KCTA of the organization's designation by the State.

### **When May METRO Require a Deposit Before Responding to a FOIA Request?**

METRO may require a deposit before providing the requested records if (a) we estimate in good faith that the fee will be more than \$50, (b) the deposit is not more than 1/2 of our total estimated fee, and (c) METRO include in its deposit notice a detailed itemization of the estimated fee and the good faith best-effort estimate of how long it will take staff to comply with the request. That time frame estimate does not bind METRO, but it does not extend METRO's response deadline.

METRO may request a deposit of up to 100%, however, if the full amount charged for any previous FOIA requests was not paid. This increased deposit applies only if all of the following conditions are met:

- The final fee for the previous request was not more than 105% of our estimated fee for that request.
- The records made available contained the information requested in the previous request and are still in our possession.
- METRO made the records available to the individual, subject to payment, within the time frame estimated under that request.
- At least 90 days have passed since notification had been sent that the records were available for pick-up or mailing.
- Individual is unable to show proof the final fee had been paid.
- METRO gave a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

METRO may not charge the increased deposit if the individual pays in full for the prior request or at least 365 days have passed since the written request was made that remains unpaid.

Metro may consider the request abandoned if the deposit is not received within 45 days after asking for it. "Abandoned" means you would no longer have to fulfill the request. Abandonment would not apply if the requestor has appealed the deposit requirement. A deadline for the deposit would include three days after sending the notice making the deadline a total of 48 days.

**Must METRO Respond to an Individual Who Still Has Not Paid the Fees Charged for a Previous FOIA Request?**

Yes, but METRO may require a larger deposit. See the answer to the previous question.

**Are Any Records Exempt from Disclosure?**

Yes; FOIA allows for a number of exemptions to disclosure. Commonly-known exceptions include personal employee information and certain interoffice communications. If the request asks for both exempt and non-exempt records, METRO's response will describe the redacted (cut-out or blacked-out) material in a general way, unless the description would reveal the exempt information.

If the requested records are exempt from disclosure, the requestor must still pay fees METRO charge for the work undertaken to process the request. METRO may decide to waive those charges.

**How Will METRO Deliver Requested Copies?**

Unless another method of delivery is requested, METRO will mail copies by U.S. first-class certified mail. If the copies exceed first-class weight limits, METRO will ship them via U.S. Parcel Post with delivery confirmation.

**May the Individual Choose to Inspect Records Instead of Requesting Copies?**

Yes. METRO may still charge a fee for responding to the request, including labor costs necessary for searching for the requested records and separating exempt from nonexempt information. METRO will not redact (cut-out or blacked-out) original documents for inspection. If exempt information is included in the requested records, METRO may charge for making copies that can be redacted to protect exempt information from disclosure.

METRO may also impose reasonable inspection rules to (a) protect its records and other property from loss, unauthorized alteration, mutilation, and destruction, and (b) prevent interference with its public transportation business. This may include, for example, keeping one of its employees present while inspection of records and videotaping takes place.

### **What Appeal Rights Does an Individual Have?**

There are rights to appeal the amount of the fee METRO charge and its denial of the request for records. Both kinds of appeals require the requestor to send a written appeal addressed to the board, Attention CCTA/KCTA Chairperson, at [CCTA@kmetro.com](mailto:CCTA@kmetro.com) or c/o CCTA/KCTA, 530 North Rose Street, Kalamazoo, Michigan 49007.

The appeal must be titled "FOIA Appeal". Fee appeals must identify how the fee exceeds what the law allows. Other appeals must give the reasons why denial of the request should be reversed. The requestor may also appeal directly to the Circuit Court. In some cases, the court may order METRO to pay damages, attorney fees, fines, and penalties.

Within 10 business days (not calendar days) after receiving a fee appeal, the CCTA/KCTA Boards must:

- Waive the fee;
- Reduce the fee and give written determination of the specific basis under FOIA for supporting the remaining fee, including certifications required by FOIA;
- Uphold the fee and give written determination of the specific basis under FOIA for supporting the required fee, including certifications required by FOIA; or
- Issue a notice extending for no more than 10 business days (not calendar days) the time period for responding to the appeal. This notice must include a detailed reason why the extension is necessary.

Within 10 business days (not calendar days) after receiving a written appeal on grounds other than fees, the board must:

- Uphold the denial;
- Reverse the denial;
- Reverse the denial in part and uphold the denial in part; or
- Under unusual circumstances, extend the appeal deadline for an additional 10 business days.

For measuring the 10-day period for action on appeals, an appeal is deemed "received" on the day of the board's first regularly scheduled meeting following the submission of the appeal. The board may not issue more than one notice of extension for an appeal. METRO will notify the individual promptly of the board's decision on the appeal.

### **What Else Should an Individual Know?**

- METRO will keep a copy of each FOIA request for no less than one year from the date we receive it.
- METRO reserves the right to vary from these procedures on a case-by-case basis.
- METRO reserves the right to change these procedures as we deem appropriate.