

State of Michigan
Independent Citizens Redistricting Commission (MICRC)
Written Public Summary of MICRC Public Record Request Procedures and
Guidelines

Adopted February 18, 2021
Amended March 10, 2022

MICRC WRITTEN PUBLIC SUMMARY OF PUBLIC RECORD REQUEST PROCEDURES AND GUIDELINES

The Michigan Independent Citizens Redistricting Commission (MICRC) has adopted Procedures and Guidelines, dated February 18, 2021, and amended _____ pursuant to the MICRC Rules of Procedure, *Section 13.0, Public Access to Commission Records*, dated January 13, 2022. This document serves as the Written Public Summary of the MICRC's Public Record Request Procedures and Guidelines in compliance with the Michigan Constitution and the Michigan Supreme Court's decision in the *Detroit News v Independent Citizens Redistricting Commission*, ___Mich___ (2021) (Docket 163823).

The MICRC is committed to transparency and the proactive disclosure of public documents whenever able to reduce the need for formal Public Record requests. To that end, the MICRC regularly posts meeting materials and other documents at www.michigan.gov/micrc for the public's convenience and to foster transparency in the redistricting process. Visit www.michigan.gov/micrc to determine whether the desired information is publicly available. In particular, navigate to the Meeting Information, Meeting Notices & Materials section of the MICRC website.

What is a Public Record Request?

A Public Record request is the Commission's process, by which a person can submit a written request to access, review, or obtain a copy of a public record.

All persons, except those who are incarcerated, may submit a Public Record request to the MICRC Public Record Coordinator.

Not every record request should be made into a Public Record request:

- The MICRC maintains a website for the public's convenience and to foster transparency in the redistricting process. Visit www.michigan.gov/micrc to determine whether the desired information is publicly available. In particular, navigate to the Meeting Information, Meeting Notices & Materials section of the MICRC website.
- If there is a pending lawsuit, the records can be obtained by litigants through a subpoena or a discovery request as part of that underlying lawsuit. Documents required to be produced under a subpoena or other court order are not processed under the Procedure.

Examples of requests that are not Public Record requests include:

- Request to complete a form or survey is not a Public Record request.
- Request to answer question(s) is not a Public Record request.
- Request to draft or create a document, where none exists, is not a Public Record request.
- Request to provide a narrative explanation of a document or action is not a Public Record request.

What is a Public Record?

The MICRC adopts the definition of “public record” in Section 2(e) of the Freedom of Information Act, being MCL 15.232(e), which 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. Public record does not include computer software.”

The Michigan Supreme Court has confirmed that the MICRC is not a public body as defined in Section 2(h)(ii) of the Act, being MCL 15.232(h)(ii). However, the MICRC is nonetheless a public body charged by the Constitution with serving the public in a transparent way; therefore, all records prepared, owned, used, in the possession of, or retained by the MICRC in its official capacity are public records.

Are All MICRC Public Records Available Under the Public Record Policy?

No. This does not mean that all public records must be disclosed or released to a person who submits a Public Record request. Certain information and records may be exempt from disclosure by law.

This separates public records into two (2) classes:

1. Those that are exempt from disclosure under law; and
2. All public records that are not exempt from disclosure and that are subject to disclosure under the Act.

What Information or Records are Exempt from Disclosure?

The MICRC adopts the list of information or records in Section 13 of the Act, being MCL 15.243, that may be exempt from disclosure. There are also federal and state laws that preclude the disclosure of specific information or records under those laws, which are in turn exempt under Section 13(d) of the Act, being MCL 15.243(d). If a person seeks information or records that fall under one or more of the listed exemptions, a portion of or an entire Public Record request may be denied. The exemption under the Act must be identified to the person seeking the information or record and a written explanation must be provided regarding why the exemption applies in that particular instance.

The release of lawfully precluded information or records by a public body employee would result in the violation of state or federal law. This can result in criminal penalties.

Who is the MICRC Public Record Coordinator?

In accordance with the MICRC's Public Record Request Procedures and Guidelines, the Commission has assigned the responsibilities of Public Record Coordinator to the Executive Director of the MICRC to handle or to delegate, or in the absence of an Executive Director, the Secretary of State in its constitutional role as nonvoting secretary to the MICRC.

What Should my Public Record Request Include?

Although no specific form is required to submit a Public Record request to the MICRC, a form is available for your use and convenience on the MICRC website at: www.michigan.gov/micrc.

Also, for your convenience, you may email the completed form or your written request, which provides sufficient information to locate that requested record(s), to: MICRC-FOIA@Michigan.gov.

1. When submitting a Public Record request, you must sufficiently describe a public record to enable personnel to locate the record(s). This should include:
 - A comprehensive description of the document you are seeking; and
 - Timeframe and/or dates, if appropriate.
2. Please try to avoid “any and all” in your description. If your request is too broad, personnel who will be searching and retrieving the record will likely encounter difficulties in locating the record.
 - If the scope of your request is too broad for 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 will be for personnel to search and retrieve the requested record.
3. Your request should include the word “Public Record” or “Public Record Request.”

How do I File a Public Record Request?

Written Public Record requests or the completed Michigan Independent Citizens Redistricting Commission (MICRC) Public Record request form can be submitted in one of the following ways:

- Email: MICRC-FOIA@Michigan.gov; or
- Mail:

Michigan Independent Citizens Redistricting Commission (MICRC)
c/o Michigan Department of State
Attn: FOIA Coordinator
P.O. Box 30204
Lansing, MI 48918

All Public Record requests are required to include a full name, phone number and mailing address. Verbal requests for public records are not accepted.

How will my Public Record Request be Handled by the MICRC?

1. All Public Record requests will be processed by MICRC personnel, or staff designees of the Secretary of State in their capacity as nonvoting secretary of the Commission.
2. Your request will be forwarded to the appropriate individual who would most likely have or know the location of the requested record.
 - That individual will exercise due diligence in searching for the requested record(s) from all reasonable places and will advise whether the MICRC is in possession of the requested record.
 - If appropriate, the individual will either complete a Public Record labor costs form or provide the necessary information required to assess an estimate of labor costs or the labor costs incurred under the Act.
3. The individual will return 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 Public Record for review.
 - Records will be reviewed to make the determination whether there is any applicable exemption under Section 13 of the Act, being MCL 15.243, which the Commission has adopted, and/or whether there is any state or federal statute that would preclude the MICRC from disclosing the requested record.
 - If necessary, the exempt and non-exempt information will be separated from the record, either by redaction or withholding certain document(s). Where appropriate, time will be tracked to: 1) separate the exempt from non-exempt information; and 2) charge the labor costs to the person who submitted the request consistent with the Act.

What Type of Response Will I Receive to My Public Record Request?

There are several options when responding to written requests for public records. The request can be granted, denied, granted in part and denied in part, or the Public Record Coordinator can take a single ten (10) business day extension. After the ten (10) business days extension expires, a response is required with one of the other options.

Consistent with Section 5 of the Act, being MCL 15.235, unless otherwise agreed to in writing by the person making the Public Record request, within five (5) business days of the receipt of the Public Record request a written response shall be provided to the person who submitted the Public Record request by:

1. Extending the MICRC's time to respond to the request.

- If the request was received by electronic transmission, it is deemed to have been received by the Public Record Coordinator on the next business day.
- Any individual associated with the MICRC, being individual Commissioners or staff who receive a written request for a public record must immediately forward that request to the Public Record Coordinator. If an individual receives a written request for a public record that is delivered to a spam or junk-mail folder, that individual must record the date and time the written request is delivered to the spam or junk-mail folder and date and time the individual first becomes aware of the written request. The individual must forward those dates and times to the Public Record Coordinator with the written request.
- If the requested record is not readily accessible, the MICRC may extend its time to respond by an additional ten (10) business days.
- Saturdays, Sundays and holidays are not considered business days.

2. Requesting payment of a good faith deposit.

- If the estimated fee to process a Public Record request is greater than \$50.00, a good-faith deposit will be required from the requestor before processing the Public Record request. The deposit shall not exceed 1/2 of the total estimated fee except where that person has a previously unpaid FOIA request.
- Unless otherwise directed under the Act, a request from a person who has not paid for copies of records, which were made available for the person in his/her previously submitted Public Record request, a deposit may be required of 100% of the estimated labor costs and duplication fees before processing begins on the new Public Record request from that person.
- The estimated fee will consist of: 1) an estimated number of hours it will take to search and retrieve the requested records and, where appropriate, the number of hours it will take the Public Record Coordinator to review and to separate the exempt from the non-exempt information; and 2) the hourly wage rate calculated consistent with the statute based on who is doing the work and who is capable of doing the work. Consistent with the Act, the hourly labor rate will include base salary and fringe benefits.

- Any written notice of a deposit shall also contain a best effort estimate regarding the time frame after a deposit is received that it will take to provide the public records to the requestor. The time frame estimate is not binding but shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner consistent with this State's public policy under Section 1 of the Act, being MCL 15.231, and the nature of the request in the particular instance.
- All deposit payments must be submitted in check or money order made payable to the State of Michigan in the specific amount and within the timeframe requested.
- The person who made the Public Record request will be informed 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 delivery via email or First-Class Mail.
- If appropriate, payment may be requested for the records and/or labor costs incurred consistent with the Act. The response letter will provide a page count or an estimated page count; itemize the time spent by the personnel that searched and retrieved the requested records; and the hourly wage rate consistent with the statute based on who completed the work and who were capable of doing the work, consistent with the Act. Consistent with the Act, the hourly wage labor rate will include the base salary and fringe benefits.
- There is no fee for requests that do not incur costs above the threshold set in the MICRC Procedures and Guidelines. Fees are calculated using its Procedures and Guidelines and you will receive a detailed itemization of the fee. A good-faith deposit may be required before your request is processed. After you pay any deposit and final balance due, records that are possessed, that fall within the scope of your request, and that legally may be disclosed to the public, will be produced. You may also be notified you that some of the records you have requested are available on the MICRC website.
- If seeking labor costs, the person who made the Public Record request will be informed 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 record is being denied, identify all of the relevant exemptions, and include a description of document(s) that are 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 the information provided by personnel from the MICRC.
- If appropriate, payment may be requested for the records and/or labor costs incurred consistent with the Act. The response letter will provide a page count, itemize the time spent to search and retrieve the requested records; provide the hourly wage consistent with the statute based on the person doing the work and capable of doing the work; itemize the time spent by the Public Record Coordinator reviewing 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.
- There is no fee for requests that do not incur costs above the threshold set in its Procedures and Guidelines. Fees are calculated using its Procedures and Guidelines and you will receive a detailed itemization of the fee. You may be required to pay a good-faith deposit before your request is processed. After you pay any deposit and final balance due, the MICRC will produce records that are possessed, that fall within the scope of your request, and that legally may be disclosed to the public. You may also be notified that some of the records you have requested are available on the MICRC website.
- The person who made the Public Record request will be informed 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. Reasons the MICRC may deny a request include:
 - i. You did not describe the records you have requested well enough and what you are requesting cannot be determined;
 - ii. The MICRC has determined that it does not possess the records that respond to your request; or
 - iii. The records you have requested are exempt from public disclosure.
- If the denial is based on “no record” the response letter will serve as a certificate of no record which would verify that the MICRC 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 will Public Record Labor Costs and/or Fees be Calculated?

1. The Act permits a fee to be charged to process Public Record requests using a form to give you a detailed itemization of the costs involved.
2. All labor costs and/or fees that are requested must be submitted in check or money order made payable to the State of Michigan in the specific amount requested in the response prior to making the records accessible to the person who submitted the Public Record request.
3. Consistent with the Act, a black and white hard copy in 8.5" x 11" or 8.5" x 14" paper format, will be made available for \$0.10 per page.
4. Irregular-sized hard copy of the record can also be made available at cost.
5. A color copy of the record in in 8.5" x 11" or 8.5" x 14" paper format, if available, can be available at cost.
6. The fees and labor costs may be charged consistent with the Act and in the manners required by the Act. The following may be included:
 - Labor costs associated with searching, locating, and examining public records, when failure to do so will result in unreasonably high costs.
 - Labor costs associated with reviewing the record to separate the exempt from the non-exempt information when failure to do so will result in unreasonably high costs. If labor cost is incurred by a contractor, it shall not exceed an amount equal to six (6) times the State of Michigan minimum hourly wage.
 - The cost of computer discs, computer tapes, other digital or similar media when the request is for non-paper physical media.
 - 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.
 - For paper copies, the fee shall be the total incremental cost of necessary duplication. A page count will be provided.
 - 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.
 - The actual cost of mailing public records.

Is the Response Letter I Received Final or Can It Be Challenged?

If a fee is charged or all or part of a request is denied, you may submit to the MICRC Executive Director, or, in her absence, to the full Commission, a written appeal that specifically states the word "Appeal" or "Public Record Appeal" and identifies the basis for which the fee should be reduced, or the disclosure determination should be reversed. Written appeals may be sent to the email address or mailing address listed above and will be forwarded to the Executive Director, or, in her absence, to the full Commission. If the request or appeal is during a time when the Commission is dormant, then it will be handled by the Michigan Department of State pursuant to their standard FOIA policy and practices.

- Email: MICRC-FOIA@Michigan.gov; or
- Mail:

Michigan Independent Citizens Redistricting Commission (MICRC)
c/o Michigan Department of State
Attn: FOIA APPEAL / Executive Director
P.O. Box 30204
Lansing, MI 48918