

# Decision Tree to Assist Public Bodies in Responding to FOIA Requests During the Covid-19 Pandemic

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On April 5, 2020, Governor Whitmer issued an Executive Order to provide guidance to public bodies in responding to FOIA requests during the Covid-19 Pandemic. What follows is a decision-tree to assist in handling FOIA requests that have been received beginning with the declaration of emergency on March 10, 2020 through June 4, 2020.

## **Question 1: How was the request received by the public body (City)?**

- A. By email or through the City's website FOIA page? Go to Question 2A.
- B. Regular mail, hand delivery, or facsimile? Go to Question 2B.

## **Question 2: When is the FOIA request deemed "received"?**

- A. The next business day for the City per FOIA Section 5(1). Go to Question 3.
- B. Per E.O. 2020-38, when a City employee physically opens the envelope containing the request or removes it from the fax machine or takes physical delivery. However, the E.O. does not require City to have an employee open mail or check a fax machine if the employee is not otherwise required to report to work. Go to Question 3.

## **Question 3: What is the time frame to respond to a request once it is received?**

- A. 5 business days, which may be extended for an additional 10 business days per FOIA Section 5. Go to Question 4.

## **Question 4: Does the request seek an in-person inspection of a public record?**

- A. Yes. Go to Question 5.
- B. No. Go to Question 6.

## **Question 5: What are the obligations of a public body (City) to respond to a request for in-person inspection of a public record?**

- A. While City offices are closed to the public, and until June 4, 2020, the City may defer acting on the request.
- B. If the City defers the request for an in-person inspection of records, it must explain the deferral and its reason for doing so in the timely response (See Question 3) to the requestor.
- C. City response must advise requestor that they may amend the request to exclude the deferred portion of the request in order to permit the City to more promptly process the remainder of the request. Go to Question 6.

## **Question 6: Does the response to the request require "in-person efforts" by public body (City) staff to locate, examine, delete exempt information, copying, or mailing?**

- A. Yes. The response may be deferred to June 4, 2020 and the City must provide the requestor the notices set forth at Question 5.
- B. No. If the work required by "in-person efforts" can be done remotely by electronic means, the E.O. requires a timely response under FOIA Section 5 and delivery of non-exempt portions of the requested public records by electronic means as required by FOIA Section 4(1)(c).