

LEGAL ALERT

To: NEOLA/National Charter Schools Institute Clients
From: NEOLA
Re: Changes to FOIA, Effective July 1, 2015
Date: February, 2015

The legislature recently implemented changes to the Michigan Freedom of Information Act ("FOIA"). These changes go into effect July 1, 2015. This legal alert is intended to provide an overview of the most significant revisions to allow the Clients to make necessary changes to practices and procedures and familiarize appropriate staff with the new obligations and requirements. This alert does not cover every change and we recommend that current practices and procedures be reviewed with legal counsel to determine what, if any, actual changes need to be made.

Significant Changes Regarding Fees

The revisions to the law include many changes to how a public body may charge fees for responding to FOIA requests. The most notable changes limit a public body to charging only certain categories of fees and require specific and detailed notice be provided to the public regarding what fees may be charged.

A public body is now required to develop and use a standard form to provide a detailed itemization of any fee amount it has or will charge in its response to written requests under FOIA. The allowable charges are limited to six fee components and restrictions are placed on how the fees must be calculated by the public body in each of these components. For example, charges for paper copies are limited to 10 cents per sheet, excluding the other allowable costs. One component – labor costs relating to separating exempt from nonexempt information – may be contracted out in certain circumstances and charged at a higher rate as described in the statute. Labor costs may include a fringe benefit multiplier of up to 50%.

A good faith deposit of not more than 1/2 of the total estimated fee may be requested if the fee estimate or charge exceeds \$50. If this occurs, the public body must also include a best efforts estimate of the time frame it will take for it to comply with the request with the total fee estimate.

No fees may be charged for information available on a Client's website, unless paper copies are requested after the requester is informed by the public body of the availability of the materials on the website. A public body may refer the requester to the website in lieu of providing the information. Additionally, if an employee receives a verbal request for information that is available on the website, he/she must inform the requester of its availability and location on the website.

In addition to changes to allowable fees, the revisions include additional mandates for how to assess and treat requests from indigent individuals and nonprofit organizations. A 100% deposit may be required from individuals who have requested, but not paid for, records in the past, with certain specified limitations.

Access to Information

If a requester asks for records via nonpaper physical media, the public body must comply with this request if it is technologically capable of doing so.

A public body is now required to establish procedures and guidelines to implement FOIA. A public body must also create a written public summary of the procedures and guidelines explaining to the public how to submit a request, how to understand a response, deposits, and fees, and how to appeal an adverse decision in "a manner so as to be easily understood by the general public." This should be prepared by each Client based on its particular procedures.

The procedures, guidelines, and written summary must be posted on a public body's website and must be made available for free with each written response to a FOIA request and upon request. These may be provided in a written response by providing a link to the appropriate web page, as opposed to producing paper copies.

Time for Response/Failure to Respond

The revisions allow for relief from the response time requirements if a written request is submitted electronically and ends up in the public body's spam or junk mail folder. If that happens, the request is not considered received until 1 day after the public body first becomes aware of the request.

If a public body does not respond in a timely manner, it must reduce charges for permissible labor costs as described in the statute (5% per day up to a 50% maximum). However, this reduction is only required if: 1) the failure was willful and intentional, or 2) the request included certain terms or words within the first 250 words such that the entity should have realized it was a FOIA request.

Penalties/Remedies

The civil fines for an "arbitrary and capricious" violation of the act have increased to \$1,000. Additional civil fines of \$2,500 - \$7,500 are required to be assessed against a public body if a court finds the public body willfully and intentionally failed to comply or otherwise acted in bad faith.

The requesters have two options if the public body charges an excessive fee: 1) appeal to the head of the public body, if permitted by the procedures and guidelines, or 2) initiate a civil action in the circuit court. If an appeal to the head of the public body is appropriate, the head of the public body must take action within 10 business days after receiving the appeal.

If you have any questions concerning the information in this alert, you should address them directly with your board's legal counsel.

This legal alert is intended as general information and not legal advice. No attorney-client relationship exists. If legal advice is required, obtain the services of an attorney.

MICHIGAN FREEDOM OF INFORMATION ACT (“FOIA”)

Cesar Chavez Academy Procedures and Guidelines

The Freedom of Information Act (Act 442 of the Public Acts of 1976) (regulates and sets requirements for the disclosure of Public Records by all Public Bodies in the state. These Procedures and Guidelines inform individuals of Cesar Chavez Academy’s guidelines for obtaining information under FOIA.

KEY DEFINITIONS.

The term “Court” means the applicable Circuit Court in the County where Cesar Chavez Academy maintains its primary location.

The term “FOIA Coordinator” means an individual designated by Cesar Chavez Academy in accordance with FOIA to accept and process requests for Public Records. For the purpose of these procedures and guidelines, the Board of Directors of Cesar Chavez Academy hereby designates Pamela Williams of Cesar Chavez Academy as FOIA Coordinator for Cesar Chavez Academy with the authority and responsibilities stated in FOIA. FOIA Coordinator shall be responsible to accept and process all Written Requests for Public Records and shall also be responsible for approving a denial under FOIA.

The term “Person” means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in any correctional facility in the U.S.

The term “Public Body” means and includes state officers, employees, agencies, departments, divisions, bureaus boards, commissions, councils, school districts, and community colleges as well as any other body which is created by state or local authority or which is primarily funded by or through state or local authority. Public Body does not include private non-profit corporations.

The term “Public Record” means any Writing prepared, owned, used by or in the possession of or detained by Cesar Chavez Academy in the performance of an official function, from the time it is created. Public record does not include computer software. FOIA does not require Cesar Chavez Academy to create a compilation, summary, or report of information or to create a new Public Record. A Person’s correspondence requesting information under FOIA is itself considered a Public Record.

The term “Unusual Circumstances” means any one or combination of the following, but only to the extent necessary for the proper processing of a request:

- 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 field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the Written Request.

The term “Requesting Party” means the Person making a Written Request.

The term “Writing” means handwriting, typewriting, printing, 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.

The term “Written Request” means a Writing that asks for information, and includes a Writing transmitted by facsimile, electronic mail, or other electronic means.

COVERAGE.

FOIA establishes requirements for the disclosure of Public Records by all Public Bodies in the state. In general, all records, except those specifically cited as exceptions, are covered by FOIA. The Public Records covered include minutes of open meetings, officials’ voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other Writings which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered. It does not matter what form the record is in.

Upon receiving a Written Request for a Public Record pursuant to these procedures and guidelines, any Person has the right to inspect, copy, or receive copies of the requested Public Records, unless the requested Public Record is exempt from disclosure pursuant to FOIA. A Written Request must be in writing, and must sufficiently describe the Public Record to allow Cesar Chavez Academy to identify and locate the Public Record. A Person may also subscribe to Public Records issued or created by Cesar Chavez Academy on a regular basis, and such subscriptions may be valid up to six months. However, if a request pertains to materials referred to in the Open Meetings Act of 1976, the subscription is valid for one year. If a requested Public Record may be obtained on Cesar Chavez Academy’s website, FOIA Coordinator shall notify the Requesting Party in writing of such availability and provide the direct Internet address or link to obtain such Public Record. If, after receiving such written notification, the Requesting Party notifies Cesar Chavez Academy that he or she continues to want Cesar Chavez Academy to provide a copy of the available Public Record, in any format, Cesar Chavez Academy shall process such request and may impose additional labor costs as specified in the Fees section below. Upon request for public inspection, Cesar Chavez Academy will provide reasonable facilities so that requesting Persons may examine and take notes from Public Records. The facilities will be made available for use during Cesar Chavez Academy’s regular business hours. Cesar Chavez Academy is obligated to take appropriate steps to safeguard original Public Records while being reviewed. Cesar Chavez Academy may provide information without a Written Request. If the request is verbal, and the information is readily available on the website, FOIA Coordinator shall inform the Requesting Party where to find the information.

TIMELINES.

A Written Request made by facsimile, electronic mail, or other electronic transmission will not be deemed received until one (1) business day after the electronic transmission is made. If the Written Request is sent by email and is automatically delivered to a spam or junk-mail folder, the Written Request is not received until one (1) day after Cesar Chavez Academy discovers the Written Request. The time the emailed Written Request is delivered to the spam/junk-mail folder and the time Cesar Chavez Academy becomes aware of the Written Request will both be noted in its written response. When Cesar Chavez Academy receives a Written Request for a Public Record, FOIA Coordinator will provide a written response that includes a detailed itemization of the calculated fees and deposit costs for Cesar Chavez Academy to provide the documents. Cesar Chavez Academy will respond to FOIA requests within five (5) business days after the Written Request is deemed received, unless the five-day period is waived by the Requesting Party, by one of the following:

- Grant the Written Request.
- Issue a written notice to the Written Requestor denying the Written Request, including the reasons for the denial.
- Grant the Written Request in part, and issue a written notice to the Written Requestor denying the Written Request in part.
- Notify the Requesting Party in writing and extend the time for an additional ten (10) business days setting forth the reasons for the extension as well as a detailed itemization of the total estimated fee. Cesar Chavez Academy shall not issue more than one (1) notice of extension for a particular request.

Upon receipt by Cesar Chavez Academy of the total amount due, FOIA Coordinator will provide the requested documents. A failure to respond to a request constitutes a final decision to deny the Written Request which may, among other things, form the basis for a Court suit to force disclosure.

FEES.

FOIA allows for Cesar Chavez Academy to charge fees in connection with Written Requests made for Public Records, except as noted or as provided for otherwise in FOIA. A fee will be charged for a Public Record search, copying for inspection, or for providing a copy of a Public Record. Fees include the cost of search, examination, review, separation, and deletion of exempt from nonexempt information, mailing costs, and incremental cost of duplication or publication including labor, as provided for in FOIA. The cost of search, examination, review, separation, and deletion of exempt from nonexempt information may also be charged if the failure to do so will result in unreasonably high costs to Cesar Chavez Academy because of the nature of the Written Request in a particular instance. If such is the case, Cesar Chavez Academy shall specifically identify the nature of these unreasonably high costs. The cost for time spent on a Public Record search, on duplicating Public Records by means other than photocopying, on examining and reviewing Public Records, on separating exempt from nonexempt information, and on redacting exempt information from Public Records shall be calculated using the wage of the lowest paid Cesar Chavez Academy employee capable of searching for, locating, and examining the requested Public Records. Labor costs shall be charged in increments of at least 15 minutes with all partial time increments rounded down. Cesar Chavez Academy may also add up to 50% of fringe benefit costs to the applicable labor charge amount and will be clearly

noted in the detailed itemization form. Subject to the 50% limitation, Cesar Chavez Academy shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Notwithstanding the foregoing, 100% of fringe benefit costs may be added to the applicable labor charge if the Requesting Party is notified in writing that the Public Records requested are readily available on Cesar Chavez Academy's website and the Requesting Party continues to request that Cesar Chavez Academy provide a physical copy of said record.

Overtime wages shall not be included in the calculation of labor costs unless the Requesting Party specifically approves the use of overtime in writing, and overtime wages are clearly noted in the detailed itemization form.

If Cesar Chavez Academy does not employ an individual in-house who is capable of separating exempt from non-exempt information in a particular instance, as determined by FOIA Coordinator, it may utilize an outside contractor. In those instances, Cesar Chavez Academy shall clearly note the name of the individual or firm hired on the detailed itemization form. The cost of the contractor's labor, including necessary review directly associated with separating and deleting exempt information from non-exempt information, shall not exceed an amount equal to six (6) times the minimum employee hourly wage rate calculated under FOIA. Cesar Chavez Academy will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession. The cost for time spent photocopying documents shall be billed at the hourly wage of the lowest paid full-time clerical employee of Cesar Chavez Academy

A Requesting Party may stipulate that the Public Records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. Notwithstanding the foregoing, such stipulation must be within the technological capabilities of Cesar Chavez Academy. A fee will be incurred for the most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media requested.

Fees for responding to any request shall include duplication (copying) costs and mailing costs. Duplication (copying) costs shall be set from time to time by resolution of the Superintendent in an amount that does not exceed 10 cents per page (8½ x 11 and 8½ x 14). Cesar Chavez Academy shall use the most economical method of duplication (i.e., double-siding, etc.).

Cesar Chavez Academy shall charge the actual costs of mailing via first class mail unless it is determined that such costs are extremely minimal, such as the cost of a postage stamp for a one ounce letter mailed through the U.S. Postal system. If the copies of the Public Records to be sent to the Requesting Party exceed first-class mail weight limits, those copies will be shipped via U.S. Parcel Post (or by another commercial carrier at similar rates), and the actual cost of shipping will be billed to the Requesting Party. If the Requesting Party asks that the records be shipped or delivered via any other method, the Requesting Party will pay for all costs of the delivery method requested.

Cesar Chavez Academy may seek a good faith deposit before undertaking the work necessary to respond to a Written Request if, in FIOA Coordinator's judgment, based upon a preliminary

review of said request in consultation with the departments/programs that will provide the relevant Public Records, the total fee to be charged is estimated to exceed \$50.00. The deposit shall not exceed half of the total fee projected. If Cesar Chavez Academy requires a deposit, it will not process the Written Request until the deposit is paid. A request for a good faith deposit shall include a detailed itemization of the total estimated fee as well as a best-efforts estimate regarding the time frame it will take to provide the Public Records to the Requesting Party. Cesar Chavez Academy may require a one-hundred percent (100%) deposit from a Requesting Party who has not previously paid a fulfilled FOIA request, provided the requirements in FOIA are met.

All other fees for responding to a FOIA request will be billed when Cesar Chavez Academy responds to FOIA request. An itemized invoice will be provided by Cesar Chavez Academy with the written response. Cesar Chavez Academy reserves the right to require payment in full of all fees incurred in processing a FOIA request before delivering copies of the responsive documents.

FEE REDUCTION OR WAIVER.

A Public Record search may be conducted and copies furnished without charge or at a reduced charge if it is determined 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 benefiting the general public. A Public Record search shall be made and a copy of a Public Record shall be furnished without charge for the first \$20.00 of the fee for the following exemptions:

- A Requesting Party who is entitled to information under FOIA and who submits an affidavit stating that the Requesting Party has an inability to pay the cost because of indigence. (This caveat shall not apply if the Requesting Party has received discounted copies of Public Records from Cesar Chavez Academy twice during the calendar year; or the individual requests information in conjunction with outside parties who are offering or providing payment, or other remuneration to the individual to make the Written Request.)
- A non-profit operating under the Developmental Disabilities Assistance Act, and the Protection and Advocacy for Individuals with Mental Illness Act: i. Made on behalf of the organization or its clients. ii. Made for a reason consistent with protecting and advocating for the rights of developmentally disabled and mentally ill persons. iii. Provides documentation of its designation by the state.

DENIALS.

FOIA Coordinator is responsible for the denial of the Written Request and shall sign the written notice of denial (a "Written Denial"). A Written Denial of a request in whole or in part shall contain:

- An explanation of the reason for the determination that the Public Record, or portion of that Public Record, is exempt from disclosure.
- A statement that the Public Record does not exist under the name given by the Requesting Party or by another name reasonable known to Cesar Chavez Academy.

- A description of a Public Record or information on a Public Record that is separated or deleted pursuant to FOIA, if separation or deletion is made.
- An explanation of the Requesting Party's right to do either of the following:
 - Submit to the Cesar Chavez Academy's Board of Directors a written appeal that specifically states the word "appeal" and identifies the reasons for reversal of the Written Denial.
 - Seek judicial review of the Written Denial under FOIA.
- Notice of the right to receive attorneys' fees and damages as provided under FOIA if, after judicial review, the Court determines that Cesar Chavez Academy has not complied with FOIA and orders disclosure of all or a portion of a Public Record. Pursuant to FOIA, Cesar Chavez Academy may make reasonable rules necessary to protect its Public Records and to prevent excessive and unreasonable interference with the discharge of its functions. Therefore, it is the policy of the Cesar Chavez Academy that FOIA requests that create or result in an excessive and unreasonable interference with the discharge of Cesar Chavez Academy functions will be denied.

RIGHT TO APPEAL A DENIAL.

If a Requesting Party desires to appeal a Written Denial of a Written Request for a Public Record, in whole or in part, the Requesting Party may submit a written appeal to Cesar Chavez Academy's Board of Directors or may seek judicial review of the denial, pursuant to FOIA. A written appeal to the Board of Directors shall specifically state the word "appeal" and identify the reasons asserted for the reversal of the denial. Within ten (10) business days after receiving a written appeal, the Board of Directors shall do one of the following:

- Reverse the disclosure denial.
- Issue a written notice to the appellant upholding the denial.
- Reverse the denial in part and issue a written notice to the appellant upholding the denial in part.
- Under Unusual Circumstances, issue a notice extending, for not more than ten (10) business days, the period during which the Board of Directors shall respond to the written appeal. The Board of Directors shall not issue more than one (1) notice of extension for a particular written appeal.

The Board of Directors is not considered to have received a written appeal until its next regularly scheduled meeting after the appeal is submitted. Any failure to respond to an appeal shall be considered a decision to uphold the denial. If an appeal is denied in whole or in part by the Board of Directors, the appellant may seek judicial review of the nondisclosure by commencing an action in Court.

RIGHT TO APPEAL A FEE.

If the Requesting Party believes the fee estimated or charged for the Written Request exceeds the amount permitted under these procedures and guidelines or under FOIA, the Requesting Party is required to submit to the Cesar Chavez Academy's Board of Directors a written appeal for a fee

reduction that specifically states the word "appeal" and identifies how the required fee is alleged to have exceeded the amount permitted under these procedures and guidelines or FOIA. Within ten (10) business days after receiving a written appeal, the Board of Directors shall do one of the following:

- Waive the fee.
- Reduce the fee and issue a written determination to the Requesting Party indicating the specific basis under FOIA that supports the remaining fee. The determination shall include a certification from the Board of Directors that the statements in the determination are accurate and that the reduced fee complies with these procedures and guidelines and FOIA.
- Uphold the fee and issue a written determination to the Requesting Party indicating the specific basis under FOIA that supports the required fee. The determination shall include a certification from the Board of Directors that the statements in the determination are accurate and that the fee complies with these procedures and guidelines and FOIA.
- Issue a notice extending, for not more than ten (10) business days, the period during which the Board of Directors shall respond to the written appeal. The notice of extension shall include a detailed reason why the extension is necessary. The Board of Directors shall not issue more than one (1) notice of extension for a particular written appeal.

If a Requesting Party disagrees with the Board of Directors' determination, the Requesting Party may commence an action in Court within 45 days of Cesar Chavez Academy's determination, to seek a fee reduction. If a civil action is commenced against Cesar Chavez Academy under this provision, Cesar Chavez Academy is not obligated to complete the processing of the Written Request until the Court resolves the fee dispute.

ENFORCEMENT.

An action seeking a Court ordered disclosure may be commenced in the Court. The burden is on the Cesar Chavez Academy to sustain its denial. In addition to obtaining a Court Order requiring disclosure, a complainant who prevails in whole or part shall be awarded reasonable attorney's fees plus costs. If the Court determines that the Cesar Chavez Academy has been arbitrary and capricious in refusing or delaying disclosure of a record, the Court shall order Cesar Chavez Academy to pay a civil fine of \$1,000 paid into the state treasury. The Court shall also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000 to the Requesting Party. These damages are not assessable against individuals but rather are applicable to Cesar Chavez Academy.

If the Court determines that Cesar Chavez Academy willfully and intentionally failed to comply with this Act or otherwise acted in bad faith, the Court shall order Cesar Chavez Academy to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence, deposited into the state treasury. If the Court determines that Cesar Chavez Academy has been arbitrary and capricious by charging an excessive fee, the Court shall order Cesar Chavez Academy to pay a civil fine of \$500 paid into the state treasury. The Court shall also award, in addition to any actual or compensatory damages, punitive damages in the

amount of \$500 to the Requesting Party. These damages are not assessable against individuals but rather are applicable to Cesar Chavez Academy.

EXEMPTIONS.

Several types of Public Records are exempt from disclosure. Many of those exemptions pertain to law enforcement investigations, custodial and penal institutions, and so forth. Those exemptions that may be applicable to Cesar Chavez Academy may include, but is not limited to, the following, all of which are subject to the interpretation of Michigan courts:

- Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- Records or information specifically described and exempted from disclosure by statute.
- A Public Record or information that is furnished by the Public Body which originally compiled, prepared, or received the record or information to a public officer or Public Body in connection with the performance of the duties of that public officer or Public Body. However, the considerations originally giving rise to the exempt nature of the Public Record must be applicable.
- Information or records subject to the attorney-client privilege.
- Information or records subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner, or other privilege recognized by statute or court rule.
- A bid or proposal by a Person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or in a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.
- Appraisals of real property to be acquired by the Public Body until (a) an agreement is entered into; or (b) three (3) years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment or academic examination, unless the public interest in disclosure under FOIA outweighs the public interest in nondisclosure.
- Medical, counseling, or psychological evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.
- 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 agency determination of policy or action. This exemption does not apply unless the Public Body shows that in a particular instance the public interest in encouraging frank communication between officials and employees of Public Bodies clearly outweighs the public interest in disclosure.
- Testing data developed by a Public Body in determining whether bidders' products meet the specifications for purchase of those products by the Public Body, if disclosure of the

data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the Public Body completes the testing.

- Records of a campaign committee including a committee that receives money from a state campaign fund.
- Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code of 1978, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following: (a) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received; or (b) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.
- Records of a Public Body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the Public Body.
- Records or information relating to a civil action in which the Requesting Party and the Public Body are parties.
- Information or records that would disclose the social security number of an individual.
- Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a Public Body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code of 1931, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a Public Body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

MICHIGAN FREEDOM OF INFORMATION ACT (FOIA)

Cesar Chavez Academy Summary of FOIA Procedure

Pursuant to Section 4 of the Michigan Freedom of Information Act, MCL 15.234, (the “FOIA” or the “Act”) the Cesar Chavez Academy has established procedures and guidelines to facilitate access to information by the general public. This written summary outlines the basic procedure for submitting a FOIA request in accordance with Cesar Chavez Academy’s Board of Director Policies 8310 (Public Records) and 8350 (Confidentiality). This summary and the full FOIA Procedures and Guidelines can be found on the Cesar Chavez Academy’s website at www.chavezmartin.com.

How to Submit Written Requests.

Cesar Chavez Academy requires individuals or entities to submit FOIA requests in writing. FOIA requests may be mailed or emailed to the following address:

FOIA Coordinator
Cesar Chavez Academy
4100 Martin Street, Detroit, MI 48210
Pamela.Williams@leonagroup.com

An individual or entity may also make a written request in person at Cesar Chavez Academy’s campus (above address), email a request to the FOIA Coordinator, or fax a request to 313.361.1095.

Please review the following checklist to ensure a timely and accurate response to a request:

- Make sure the correspondence is addressed to the FOIA Coordinator and includes the proper address and/or fax number.
- Clearly state that the request is being made for a public record(s) pursuant to the “Freedom of Information Act” or the “FOIA.”
- Describe the public record(s) requested in sufficient detail so that it can be identified and located.
- Describe the subject matter of the public record(s) requested and, if possible, the approximate date that the public record(s) was created.
- If the requested public records are available on Cesar Chavez Academy’s website and the response includes the website address, then any request for paper format or other form, such as electronic form, may result in additional charges.

How to Understand Cesar Chavez Academy’s Written Responses.

When the FOIA Coordinator receives a written request for a public record, the FOIA Coordinator shall, within five (5) business days after Cesar Chavez Academy receives the request, respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice to the requestor denying the request.
- Grant the request in part and issue a written notice to the requestor denying the request in part.
- Issue a written notice extending, for not more than ten (10) business days, the period during which Cesar Chavez Academy shall respond to the request.

Deposit/Payment Requirements.

If the estimated cost of responding to a request exceeds \$50.00, Cesar Chavez Academy may require a good faith deposit of 50% to be submitted before the request is processed. Once the good faith deposit is submitted, Cesar Chavez Academy will process the request. Total fees due, including the balance remaining after a deposit, must be paid before the requested public documents may be picked up, mailed, or delivered. Good faith deposits and fees charged for responding to FOIA requests may be mailed to the address above.

Fee Calculations.

Please review the attached Fee Itemization Form, which provides a line-by-line summary and explanation of the fees that Cesar Chavez Academy may charge in response to a request, pursuant to Section 4 of the Act (MCL 15.234(1)).

Challenge and Appeal.

If the requestor believes the fee estimated or charged for the request exceeds the amount permitted under Cesar Chavez Academy's procedures and guidelines or Section 4 of the Act, the requestor must submit to the Cesar Chavez Academy FOIA Coordinator a written appeal for a fee reduction that specifically states the word "appeal" and identifies why the requestor believes the required fee exceeds the amount permitted under Cesar Chavez Academy's procedures and guidelines or Section 4 of the Act.

If the requestor disagrees with Cesar Chavez Academy's final determination, the requestor may file an appeal with the Cesar Chavez Academy Board of Directors. If still unsatisfied, the requestor may commence a civil action in Wayne County Circuit Court for a fee reduction. The civil action must be filed within 45 days of Cesar Chavez Academy's final determination to deny a request pursuant to Section 10(1)(b) of the Act. Any written response denying a request for a public record in whole or in part is final. A requestor may or may seek judicial review of the denial, pursuant to Section 10 of the Act (MCL 15.240). A requestor may receive attorneys' fees and damages pursuant to the Act, if the Court determines that Cesar Chavez Academy has not complied with Section 5 (MCL 15.235) of the Act and orders the disclosure of all or a portion of a public record.

Cesar Chavez Academy

Freedom of Information Act - Fee Schedule – Fee Estimate Form

Cesar Chavez Academy charges the following fees:

Manual searching for or reviewing of records

As of July 1, 2015, the hourly rate for a staff member capable of searching, locating, and examining public records for disclosure is \$10.00 per hour. The hourly rate for a staff member capable of separating/deleting exempt information from non-exempt information for disclosure is \$15.00 per hour. Labor costs estimated and charged will be in increments of fifteen (15) minutes and all partial increments will be rounded down.

Computer searching and printing -- the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

Contracted Services -- If there is no employee capable of separating/deleting exempt information, as determined by the FOIA Coordinator, the District may utilize a contracted individual/firm. The name of the individual/firm will be included on the detailed itemization of fees. The total amount charged shall not exceed six times the state minimum wage. As of July 1, 2015, the maximum rate charged is \$45.00 per hour.

Photocopying standard size pages -- \$0.10 per page. FOI Officers may charge lower fees for particular documents where --

- ✓ The document has already been printed in large numbers,
- ✓ The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements, and
- ✓ The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes) -- the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

Certifying that records are true copies. This service is not required by the FOIA. If we agree to provide it, we will charge \$10 per certification.

Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual costs.

Performing any other special service that you request and we agree to -- actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section

Cesar Chavez Academy
Freedom of Information Act (FOIA)
Detailed Itemization of Fees

Requester name: _____

Date of Request: _____

Information Requested: _____

Type of format requested (ex. Paper or Digital) _____

Date of District Response: _____

*Best Efforts Estimate for Completion: _____

**An earlier date may require overtime, which you must authorize on the attached response form.

Are requested Documents Available Online: Y or N

**If yes, name of website: _____

* Note: If paper copies are requested for documents available online, the fees for searching, locating, examining and copying such records noted below will apply. There will be no charge to separate/delete exempt information.

Waiver of Fees

The District may waive fees based on one of the following:

- You are an indigent person who has not received discounted copies from the district twice during the past calendar year and the request is not made in conjunction with an outside party who has agreed to pay.
- You are a non-profit organization designated by the State to carry out activities protecting those with mental/developmental disabilities and provided proof of State designation.

Based on information provided in your request, the District finds you qualify for a fee waiver: Y or N

If No, the following reason applies: _____

Estimation of Labor Fees:

Hourly Rate of Staff Member Searching,

Locating, Examining and Copying Records \$ _____ per hour

Estimated time (15 min Increments) _____

Fringe benefit Cost (.5 x hourly rate) \$ _____ per hour

A. Total Est. Cost for Searching, Locating,
Examining and Copying Records

(hourly rate + fringe rate x Est. time) _____

Hourly Rate of Staff Member

Separating/Deleting Exempt Information \$ _____ per hour

Estimated time (15 min Increments) _____

Fringe benefit Cost (.5 x hourly rate) \$ _____ per hour

B. Total Est. Cost for Separating/
Deleting Exempt Information
(hourly rate + fringe rate x Est. time) _____

If no internal staff member capable of
Separating/Deleting Exempt Information

Name of contracted person/Firm _____

Estimated time (15 min increments) _____

Hourly rate (not to exceed \$ _____)

C. Total Estimated Cost for
Contracted Person/Firm
(Est. time x Hourly Rate) _____

Total Estimated Labor Costs (A+B+C) _____

Estimation of Actual Costs:

A. Total Number of letter/legal paper Copies Requested @ .10 per page _____

B. Photocopying of odd sized documents listed below:

C. Mailing Costs – No charge if picking up documents _____

D. Cost of non-paper physical media such as Computer disk, tape, flash drive or other digital Media _____

E. Misc.- Other Special Services @ actual cost _____

Total Estimated Actual Costs:

(A+B+C+D+E) _____

Total Estimated FOIA Fee:

Labor Costs + Actual Costs _____

Estimated of Costs of Producing Items Available on the District Website

Hourly Rate of Staff Member Searching,

Locating, Examining and Copying Records \$ _____ per hour

Estimated time (15 min Increments) _____

Fringe benefit Cost (???? x hourly rate) \$ _____ per hour

A. Total Est. Cost for Searching, Locating,
Examining and Copying Records

(hourly rate + fringe rate x Est. time) _____

Total Number of letter/legal paper Copies
Requested @ .10 per page _____

Photocopying of odd sized documents listed below:

Mailing Costs – No charge if picking up documents _____

Cost of non-paper physical media such as
Computer disk, tape, flash drive or other digital
Media _____

Labor Costs + Actual Costs
(including website information) _____

Good Faith Deposit

If the total estimated FOIA Fee listed above exceeds \$50.00, Cesar Chavez Academy requires a deposit of 50% of the estimated costs.

If you have made previous FOIA requests, and the following apply, Cesar Chavez Academy will require a deposit equal to 100% of the estimated costs prior to processing your request:

- The final fee for your previous request was not more than 105% of the estimate provided.
- The public records provided in the previous request remain in Cesar Chavez Academy's possession.
- The public records provided in the previous request were made available within the estimated time frame.
- Ninety (90) days have passed since you were notified that the requested records were available for pick-up/mailing.

- You cannot show proof of prior payment for the prior request, and have not subsequently paid in full.
- Less than three hundred sixty five (365) days have passed since you made the prior request.

Based on the information above, Cesar Chavez Academy requires the following

Good Faith Deposit before processing of your request will begin:

\$ _____