

**From:** smbisio@gmail.com <smbisio@gmail.com>  
**Sent:** Monday, August 2, 2021 3:54 PM  
**To:** 'Jennifer Speagle' <speaglej@villageofclarkston.org>  
**Subject:** RE: FOIA Itemized Cost Worksheet/Invoice

Dear Ms. Speagle:

Thank you for the "friendly reminder," but you haven't yet responded to my June 14, 2021 FOIA request as the Michigan FOIA requires. Specifically, your July 15, 2021 and July 20, 2021 emails include an itemized cost worksheet but not a response to the FOIA request. This is inadequate because it provides no information about which of the nine requests were granted, denied, or granted/denied in part. Given that Clarkston continues to rely on legal advice from the same city attorney who believed that he was entitled to hide Clarkston-related records in offsite files and claim that they weren't public records, ultimately requiring that his malpractice carrier contribute to my lawsuit settlement after the city lost the legal battle that extended more than five years, I'm sure you understand my concern for the lack of precision in any FOIA response. After all, malpractice insurance carriers are unlikely to make policy payouts unless they are convinced there has been actual malpractice.

A response to my FOIA request is necessary because you provided no information regarding the nine individual requests:

- If you were unable to locate the requested records for any of the nine requests, then that portion of the request should be denied, the response should expressly state that, and MCL 15.235(5)(b) requires that you certify that those records do not exist.
- If you redacted any information, including entire pages, then that portion of the request must be denied (or denied in part), and you are required to explain what was redacted and which exemption applies. MCL 15.235(5)(a). Though there is no charge for redaction time in the main portion of the invoice, there is a \$14.50 charge noted in the subtotal box on the line that corresponds to the labor cost to redact. I'm not required to guess whether or not that was an error before sending the city a check.
- If any portion of my request was denied due to a claim of exemption or the claimed non-existence of any record, then appeal and right to sue language must accompany the FOIA response. MCL 15.235(5)(d).
- If responsive records were located for each of the nine requests and no exemptions were applied to any of the records, then the FOIA response should so state. MCL 15.235(2)(a).
- You are required to either provide a web address for your Procedures and Guidelines and the Summary of your Procedures and Guidelines or include a copy of them with the response. I received only an invoice with no copies of

these documents nor a link to the documents on the city's website. MCL 15.234(4).

Please provide the appropriate FOIA response to accompany the invoice that you provided.

In addition, the invoice is deficient in a number of ways:

- The invoice includes a charge for \$14.50 that purports to be a \$.10 per page cost. MCL 15.234(1)(d) only allows a charge for the actual incremental cost of paper copies of records that are *provided to the requester*. My FOIA request expressly asked that the records be sent electronically to my email address as permitted by MCL 15.234(1)(c). This subsection permits a requester to ask for electronic records *in lieu of* paper copies. Electronic records have no physical form and there is no per page cost to the city to produce them. Therefore, the city is charging an excessive rate when it adds a per page charge for unrequested paper records, and you've acknowledged that the records would be emailed on receipt of payment. The invoice reflects a labor hour charge for copying time, and that is all that is permissible where electronic records are involved.
- Your invoice fails to reflect a reduction in fees for a late response. The request was sent electronically on 6/14. The request was therefore "received" by Clarkston on 6/15 per MCL 15.235(1), and you confirmed receipt of the request by email on 6/15. The city should have either sent an extension letter within five business days explaining why an extension of time was required or a final response. MCL 15.235(2). Neither was sent. As I expressly advised the city that I expected "that Clarkston will strictly comply with the statutory timeframes for this request," there should have been no confusion about whether or not an extension letter was necessary if the city needed a ten-day extension to respond as authorized by MCL 15.235(2)(d). My written permission was required for any changes to the times set forth by the statute, and my permission was neither requested nor given. MCL 15.235(2).
- Even if the invoice that was sent on 7/15 could be construed as a response (which it can't be because it doesn't include the essential terms as described earlier), it was sixteen business days late (taking the Independence Day holiday into consideration). Though you emailed me on 7/13, incorrectly asserted that 7/13 was the due date, and unilaterally extended the time to respond by an additional two days, none of this changes the fact that the FOIA statute required that the city send a letter extending time or issuing a final response on or before 6/22. When a response is late, the FOIA statute imposes a 5% per day penalty reduction to your labor costs for each late day, up to maximum 50%. Even if all of your labor charges are justified, and I don't concede that point, this means that the invoice should have reflected that the \$760.75 in labor costs was reduced at least to \$380.37 as required by MCL 15.234(9)(a) (or more if the \$14.50 in the subtotal box of the invoice is also attributable to labor).

- The invoice fails to provide any justification for charging fees as required by MCL 15.234(3).
- If any portion of the invoice reflects any retrieval time for a contractor (such as the city attorney or Attorney Mark Peyser), it must be removed from the total retrieval time because the statute does not authorize any charge for retrieval work performed by a contractor. The statute only authorizes charges for the work of a contractor if that person is separating and deleting information that is exempt from that which is nonexempt, no employee is capable of performing the work in that particular instance, the contractor is identified, and the work is specifically authorized. 15.234(1)(b). The statute also doesn't authorize charging for time spent for review work by a contractor that is unrelated to segregating exempt from nonexempt information.
- Your July 13, 2021 email stated that the reason that you were unilaterally extending the time to respond to my request by two days was because you needed "to organize (weening out all dupes) and scan in all paperwork." If you've charged any time for organizing paperwork or "weening out all dupes," those charges must be removed as they aren't included within the permissible areas for which a public body may charge to respond to a FOIA request. MCL 15.234.

Please provide a corrected invoice along with the required FOIA response. I ask that you break down the cost for each of the nine items, as the search time for some of the requests should have been minimal. Although the statute doesn't require that, I could easily break the request into nine separate requests, requiring nine separate responses that would contain this information. I hope that will not be necessary.

Kindest regards,  
Susan Bisio