

Following are answers to questions City Council members have asked about the City's FOIA procedures.

1. If email response is requested, what determines the decision to instead put it on media (XXX Mb limit?)

One factor in determining the delivery method is the size of the responsive records. Every email provider can have its own rules for maximum file sizes. However, a 10-megabyte maximum attachment size is common. A second factor is the type of electronic file. For example, police body worn camera and dashcam videos are in a non-PDF format. Therefore, the Police Department places these records on DVDs.

2. Assuming PDF, delivery by 1) email < 10 megabytes, or 2) hardcopy, picked up at window:

- **fee example for request of < 50 pages response, one record.**
- **fee example for 100 page response, one record.**
- **fee example for 600 page (voluminous) response, one record.**

For a response of fewer than 50 pages delivered by email or picked up at the City Clerk's Office, the City does not impose a fee. However, if the request is voluminous, the City may impose a fee for electronic records based on the file size in megabytes.

For a response of 100 pages delivered by email, the City does not impose a fee. However, if the request is voluminous, the City may impose a fee for electronic records based on the file size in megabytes. For a response of 100 pages picked up at the City Clerk's Office, the City does not impose a fee for the first 50 pages of black and white, letter or legal sized copies. For the remaining copies, the City imposes a fee of \$0.15 per page. In this case, the fee would be \$7.50 (50 pages x \$0.15).

For a voluminous response consisting of 600 pages delivered by email, the City imposes a fee based on the file size in megabytes. For a file in PDF format, the fee is \$20 for not more than 80 megabytes of data. For a file not in PDF format, the fee is \$20 for not more than 2 megabytes of data. For a voluminous response consisting of 600 pages picked up at the City Clerk's Office, the City does not impose a fee for the first 50 pages of black and white, letter or legal sized copies. For the remaining copies, the City imposes a fee of \$0.15 per page. In this case, the fee would be \$82.50 (550 pages x \$0.15).

3. Does having status as a "recurrent requester" impact the fees required? (I believe the answer is NO)

No. The fee amounts do not change for recurrent requesters. However, under section 3.2 of FOIA, a public body may provide a recurrent requester with an estimate of the fees and may require the person to make payment before the public body copies the requested records. 5 ILCS 140/3.2(a).

4. When email response is requested, is there a way we can check to see who the actual owner of the email address is? What prevents a recurrent requester from using multiple email addresses under different names in order to avoid the delay allowed for such requests?

The City requires all FOIA requesters to provide the following information: the requester's name, complete contact information (address, phone number, email address), a clear description of the records requested, and whether or not the requester is a commercial requester. See <https://www.urbanillinois.us/forms/freedom-information-act-request-form>. Yet, some requesters disregard these requirements. In recent weeks, for example, the City has received several requests from persons who give names and email addresses but who decline to provide other contact information. In these cases, the City cannot ascertain the actual owner of the email address.

If the City does not identify each requester, nothing would prevent a recurrent requester from using multiple email addresses under different names to avoid the consequences of being a recurrent requester. The same would be true for someone who files voluminous requests. So, when a FOIA requester's identity is in question, the City makes repeated attempts to verify the requester's identity. If unable to confirm a requester's identity, however, the City may treat the request as one from a recurrent requester. Additionally, the City may require the requester to present a government-issued photo identification document before the City releases any responsive records.

5. Is there a policy to allow a certain number of "free" USB sticks per year or something like that, so that a one-time requester wouldn't have to pay for it?

Yes. Effective September 1, the City has offered a \$20 credit to each requester against FOIA fees incurred during any 12 months. The credit would allow for two free USB flash drives at their current cost of \$7.97 each and a reduced charge for a third flash drive. Nevertheless, the vast majority of FOIA requesters pay no fees. The City's fees typically apply only to requests made for commercial purposes and to the relatively few requesters who make voluminous or categorical requests.

6. We try to put as much as we can on the data portal and maintain all of the ordinances, resolutions, minutes, and meeting materials online. Are there any additional records we can put on there or are most requested records for documents that need to be redacted first?

The Police Department responds to most of the City's FOIA requests. These requests usually are for police reports. Police reports often require redactions. So, this type of record is not suitable for placement on the data portal. The types of records most requested by the City's recurrent requesters or by persons who make voluminous or categorical requests are as follows:

- A. Police reports
- B. Complaints of police misconduct

- C. Police investigations of complaints of misconduct
- D. Personnel records of employees
- E. Emails to and from employees, City Council members, and board and commission members
- F. Records concerning applications to, appointments to, and resignations from the City Council and boards and commissions
- G. Records concerning resignations, separations, retirements, and appointments of City employees

Many of these records contain private, personal, or privileged information that the City would need to redact before placing on the data portal.

7. Having a few other concrete examples of common requests with fee breakdown might help too. It would help to see what was requested for those large fees. PDFs? video? How many Mb?

FOIA requests do not commonly result in fees. The City's fees typically apply only to requests made for commercial purposes and to the relatively few requesters who make voluminous or categorical requests. Some examples follow.

FOIA request 2020-F-276.

The initial and final fee accountings for FOIA request 2020-F-276 are attached as Attachments A and B. The initial accounting shows the number of megabytes of data requested and the associated fees. However, the Public Access Counselor subsequently determined that the City could not charge a per megabyte fee in this case because the City's notice that the requester is a recurrent requester did not include language indicating that the request is also voluminous. A copy of the Public Access Counselor's determination letter concerning this case is attached as Attachment C. The City now includes the required language in its notices.

FOIA request 2020-F-386

The initial and final fee accountings for FOIA request 2020-F-276 are attached as Attachments D and E. The initial accounting shows the number of megabytes of data requested and the associated fees. Subsequently, the City eliminated the per megabyte fee for this request because the City's notice that the requester is a recurrent requester did not include language indicating that the request is also voluminous.

FOIA request 2020-F-516

The City's notice that the requester is a recurrent requester is attached as Attachment F. Because the notice includes language indicating that the request also is voluminous, the requester will be subject to payment of the per megabyte fees FOIA specifies for voluminous requests.

FOIA request 2020-F-536

The City's notice that the requester is a recurrent requester is attached as Attachment H. Since this request is not voluminous, the City will not charge a per megabyte fee for its response.

8. The way I read the statute, we shouldn't be charging recurrent requesters personnel costs unless their request is also a voluminous request.

That's true. FOIA allows a public body to charge up to \$10 an hour for searching for and retrieving requested records or examining records for necessary redactions. However, the fee applies only when responding to commercial requests. Also, a public body cannot charge for the first 8 hours spent by personnel in searching for or retrieving a requested record. 5 ILCS 140/6(f).

9. I don't think it's worth trying to collect \$0.38 for a DVD - surely the state doesn't require we charge that.

That's correct. Under FOIA, a public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. 5 ILCS 140/6(a). In practice, the City seldom does so. The City's fees typically apply only to requests made for commercial purposes and to the relatively few requesters who make voluminous or categorical requests. For example, the City's response to request 2020-F-276, discussed above, included fees for seven DVDs for just one part of the request.

10. I found this link to administrative rules for charges for IL State Police imaging products:

<https://www.ilga.gov/commission/jcar/admincode/020/02001298sections.html>

Here's where they link to

that:<https://www.isp.state.il.us/foia/faqs.cfm#:~:text=The%20fee%20is%2015%20cents,cost%20for%20reproducing%20the%20records.>

Maybe it would help if Urbana put together our own mini-version of that that spells out simplified charges. The statute also requires us to make public a standard scale of fees if we charge for actual cost for reproducing records (other than the \$.15/page spelled out in the statute for pages beyond 50)

Information about the City's FOIA fees is attached as Attachment G. This information is available on the City's website at <https://urbanaininois.us/departments/city-clerks-office>.

11. I think the main thing is that what we charge is transparent and fair, and predictable as possible. Other governments and agencies may already have a fairly simple FOIA explanation we could mimic about costs, how to avoid voluminous requests and recurrent status, etc. Here's one example:

<https://www.epcusd401.org/about-us/freedom-of-information-act>

The City's FOIA guidance is attached as Attachment G. This guidance is available on the City's website at <https://urbanaininois.us/departments/city-clerks-office>

12. Can the City maintain a list online that reports all FOIA requests and at least the City's response letter, similar to what the U of I does, for example? This would provide transparency on what requests the City is receiving and how we are responding.

Yes. The University of Illinois posts copies of its FOIA response letters at the following address: <https://uofi.app.box.com/s/xgkni7pbpp50r406bittb7mwikjmmpl>. Union County does the same. See <http://www.unioncountyil.gov/foia-responses/>. Other public bodies have different approaches to transparency. The City of Monticello posts a log containing the date of each request, the name of the requester, and a description or summary of the request. See <https://www.cityofmonticello.net/1136/FOIA-Request-Log>. The Illinois State Board of Education not only posts online copies of its FOIA response letters but also copies of the original requests and redacted responsive records. See <https://www.isbe.net/Pages/FOIA-Requests.aspx>. School District U-46 posts a log containing the date of each request, each response date, a link to a copy of each request, the requester's name and organization, links to copies of the District's response letters and responsive records for each request, and the processing time for each request. See <https://www.u-46.org/Page/6856>.

In recent weeks, the Mayor's Office, Legal Division, and Information Technology Division have been discussing how the City can maintain a FOIA log on the City's data portal.

Attachments

- A. Initial response to FOIA request 2020-F-276
- B. Final response to FOIA request 2020-F-276
- C. PAC Req. Rev. Ltr. 2020 PAC 63412 and 63421 (September 2, 2020)
- D. Initial response to FOIA request 2020-F-386
- E. Final response to FOIA request 2020-F-386
- F. Notice for FOIA request 2020-F-516
- G. Website notice
- H. Notice for FOIA request 2020-F-536