

Appendix 200-100-108-C
Freedom of Information Act
Appeal Process
Effective: February 11, 2016

This appendix provides the procedures for appealing the denial of public records or the fees assessed to obtain the public records, in accordance with the authority of MCL15.236, and NIESA Standard Operating Guideline - #200-100-108.

Section 1: Appeal of a Denial of a Public Record:

1. When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the Director of NIESA by filing an appeal of the denial with the NIESA office.
2. The appeal must be in writing, specifically stating the word “appeal” and identify the reason(s) the requestor is seeking a reversal of the denial. The NIESA FOIA Appeal Form (To Appeal a Denial of Records), may be used.
3. Within ten (10) business days of receiving the appeal the Director will respond in writing by:
 - a. Reversing the disclosure denial;
 - b. Upholding the disclosure denial; or
 - c. Reverse the disclosure denial in part and uphold the disclosure denial in part; or
 - d. Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the Director shall respond to the written appeal. The Director shall not issue more than one(1) notice of extension for a particular written appeal.
4. If the Director fails to respond to a written appeal, or if the Director upholds all or a portion of the disclosure denial that is subject to the written appeal, the requesting person may seek a review of the non-disclosure denial from the NIESA Board.
5. The appeal to the NIESA Board must be in writing specifically requesting the Board review the FOIA request and identify the reason or reason(s) the requestor is seeking a reversal of the denial.
6. The NIESA Board is not considered to have received a written appeal until the first regularly scheduled NIESA Board Meeting following the submission of the written appeal.
7. Within ten (10) business days of receiving the appeal the NIESA Board will respond in writing by:
 - a. Reversing the disclosure denial;
 - b. Upholding the disclosure denial; or
 - c. Reverse the disclosure denial in part and uphold the disclosure denial in part; or
 - d. Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the NIESA Board shall respond to the written appeal. The NIESA Board shall not issue more than one(1) notice of extension for a particular written appeal.
8. If the NIESA Board fails to respond to a written appeal, or if the NIESA Board upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the non disclosure by commencing a civil action in Circuit Court.
9. Whether or not a requestor submitted an appeal of a denial to the Director, and/or the NIESA Board, he or she may file a civil action in Ingham County Circuit Court within one hundred eighty (180) days after NIESA’s final determination to deny the request.

10. If a court that determines a public record is not exempt from disclosure, it shall order NIESA to cease withholding or to produce all or a portion of a public record wrongfully withheld regardless of the location of the public record. Failure to comply with an order at the court may be punished as contempt of court.
11. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorney's fees, costs, and disbursement. If the person or NIESA prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorney's fees, costs and disbursements.
12. If the court determines that NIESA has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order NIESA to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the State Treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against NIESA.

Section 2: Appeal of an Excessive FOIA Processing Fee:

"Fee" means the total fee or any component of the total fee calculated under Appendix 200-100-108-B, Freedom of Information Act, Fees & Detailed Cost Itemization Information , including any deposits.

1. If a requestor believes that the fee charged by NIESA to process a FOIA request exceeds the amount permitted by State law or under this policy, he or she must first appeal to the Director by submitting a written appeal for a fee reduction to the NIESA Office.
2. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The NIESA FOIA Appeal Form (To appeal an Excess Fee) may be used.
3. Within ten (10) business days of receiving the appeal the Director will respond in writing by:
 - a. Waiving the fee;
 - b. Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
 - c. Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
 - d. Issuing a notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which the Director will respond to the written appeal. The Director shall not issue more than one (1) notice of extension for a particular written appeal.
4. Where the Director reduces or upholds the fee, the determination must include a certification from the Director that the statements in the determination are accurate and that the reduced or upheld fee amount complies with its publicly available procedures and guidelines and Appendix 200-100-108-B of the FOIA.
5. Within ten (10) days after receiving the notice of the Director's determination of an appeal, the requesting person may seek a review of the fees from the NIESA Finance Committee.
6. The NIESA Finance Committee is not considered to have received a written appeal until the first regularly scheduled NIESA Board Meeting following the submission of the written appeal.
7. Within ten (10) business days of receiving the appeal the Finance Committee will respond in writing by:
 - a. Waiving the fee;

- b. Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
 - c. Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
 - d. Issuing a notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which the Finance Committee will respond to the written appeal. The Finance Committee shall not issue more than one (1) notice of extension for a particular written appeal.
8. Where the Finance Committee reduces or upholds the fee, the determination must include a certification from the Finance Committee that the statements in the determination are accurate and that the reduced or upheld fee amount complies with its publicly available procedures and guidelines and Appendix 200-100-108-B of the FOIA.
9. Within forty-five (45) days after receiving notice of the NIESA Finance Committee's determination of an appeal, the requesting person may commence a civil action in Ingham County Circuit Court for a fee reduction.
10. If a civil action is commenced against the NIESA for an excess fee, NIESA is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.
11. An action shall not be filed in circuit court unless *one* of the following applies:
 - a. NIESA does not provide for appeals of fees,
 - b. NIESA Finance Committee failed to respond to a written appeal as required, or
 - c. NIESA Finance Committee issued a determination to a written appeal.
12. If the court determines that NIESA required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Appendix 200-100-108-B under the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.
13. If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorney's fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.
14. If the court determines that NIESA has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order NIESA to pay a civil fine of \$500.00, which shall be deposited in the general fund of the State Treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.