

2410.04 Enhanced Access to Public Records Act

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SUBJECT: Enhanced Access to Public Records Act, MCL 15.441 *et seq.*

APPLICATION: DTMB; other Executive Branch Departments and Sub-units; local units of government; or other entities requesting enhanced access via DTMB.

PURPOSE: To establish a procedure to allow Enhanced Access to DTMB GIS Public Records; authorize the establishment of a fee schedule and conditions for its waiver; authorize entering into agreements with other Public Bodies; and set forth a disclaimer as to all expenses and implied warranties regarding access to or use of GIS Public Records for which Enhanced Access is provided, in accordance with the Enhanced Access to Public records Act, MCL 15.411 *et seq.*

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SUMMARY: The Enhanced Access to Public Records Act allows a Public Body to provide Enhanced Access for the inspection, copying, or purchasing of a Public Record that is not confidential or otherwise exempt by law from disclosure, and charge a reasonable fee established by the Public Body for providing Enhanced Access. Enhanced Access means a Public Record's immediate availability for public inspection, purchase, or copying by digital means, and does not include the transfer of ownership of a Public Record.

Before providing Enhanced Access to a member of the general public, however, a Public Body that elects to provide Enhanced Access must adopt an Enhanced Access policy that complies with the Act, MCL 15.443(5). Such a policy is required in order for DTMB to provide Enhanced Access to Third Parties in accordance with intergovernmental agreements providing for collection and remittance of Third Party fees under Section 3(1)(d) of the Enhanced Access to Public Records Act.

APPLICABLE FORMS: None.

DEFINITIONS:

Enhanced Access - A Public Record's immediate availability for public inspection, purchase or copying by digital means. Enhanced Access does not include transfer of ownership of Public Records.

Geographic Information System (GIS or System) - An informational unit or network capable of producing customized maps based upon a digital representation of geographic data.

Operating Expenses - Include, but are not limited to, a Public Body's direct cost of creating, compiling, storing, maintaining, processing, upgrading or enhancing information or data in a form available for Enhanced Access, including the cost of computer hardware and software, system development, employee time and the actual cost of supplying the information or record in the form requested by the purchaser.

Person - That term as defined in Section 2 of the Freedom of Information Act, Public Act 442 of 1976, MCL 15.232, as amended.

Public Body - That term as defined in Section 2 of the Freedom of Information Act, Public Act 442 of 1976, MCL 15.232, as amended.

Public Record - That term defined in Section 2 of the Freedom of Information Act, Public Act 442 of 1976, MCL 15.232, as amended.

Reasonable Fee - A charge calculated to enable recovery over time of those operating expenses directly related to the Public Body's provision of Enhanced Access.

Software - That term defined in Section 2 of the Enhanced Access to Public Records Act, Public Act 462 of 1996, MCL 15.442, as amended.

Third Party - A Person who requests Geographic Information System data or output from a Geographic Information System under the Enhanced Access to Public Records Act, Public Act 462 of 1996, MCL 15.442, as amended. However, Third Party does not include a Person for whom a fee authorized under the Act is waived in accordance with an intergovernmental agreement described in Section 3 of the Enhanced Access to Public Records Act.

PROCEDURES:

Authorization:

- DTMB may elect to provide Enhanced Access for the inspection, copying, or purchasing of a GIS Public Record, within the custody or control of DTMB, that is not confidential or otherwise exempt by law from disclosure to Public Bodies or members of the general public, MCL 15.443(1).
- The Director of DTMB, or his/her designee, shall determine which GIS Public Records created, possessed, and controlled by DTMB may be made available through Enhanced Access.
- This procedure applies to all GIS Public Records and divisions of DTMB, unless such division or specific type of GIS Public Record or System is covered by an independent Enhanced Access to Public Records policy under Section 3(5) of the Enhanced Access to Public Records Act.
- This procedure does not require DTMB to provide Enhanced Access to any specific GIS Public Record, MCL 15.443(6).

Agreements:

- DTMB may enter into agreements with other Public Bodies to receive their GIS data and provide Enhanced Access to such GIS Public Records on an on-going basis.
- DTMB may enter into agreements with other Public Bodies to furnish DTMB GIS data and any resulting repositories on an on-going basis, provided that the receiving Public Body complies with Section 3(1)(d) of the Enhanced Access to Public Records Act.
- DTMB may enter into agreements with other Public Bodies to convey to the providing Public Body that portion of the fee described in the agreement as determined in their Enhanced Access to Public Records policy, which enables the providing Public Body to recover, over time, those operating expenses directly related to providing access to or output from their System.

Fees:

- Except as otherwise provided by law, the Director of DTMB will establish and charge a reasonable fee for Enhanced Access to those GIS Public Records for which Enhanced Access is available.
- The fees set by the Director of DTMB may vary between specific types of Systems, and output from a System, such that DTMB does not suffer a financial detriment by providing Enhanced Access; is able to collect from a Third Party a reasonable fee that enables DTMB to recover, over time, its operating expenses directly related to providing access to output from a specific System to a Third Party, and; enables DTMB to furnish to a providing Public Body that portion of the fee detailed in an applicable intergovernmental agreement under Section 3(1)(d) of the Enhanced Access to Public Records Act.
- Upon providing a Third Party requestor with Enhanced Access to a System, or output from a System, in accordance with the terms of an intergovernmental agreement, DTMB will convey to the providing Public Body that portion of the fee which enables the providing Public Body to recover, over time, those operating expenses directly related to providing Enhanced Access to the relevant GIS Public Record(s).
- Except as otherwise provided by law, or the Fee Waiver section of this procedure, all Persons shall be charged the reasonable fee set by the Director of DTMB for Enhanced Access to GIS Public Records.

Fee Waiver:

- DTMB may provide Enhanced Access without charge or at a reduced charge if the Director of DTMB determines, in his or her sole discretion, that a fee waiver or reduction is in the public interest because Enhanced Access can be considered as primarily benefitting the general public or serving an educational purpose.
- DTMB may enter into intergovernmental agreements with other Public Bodies to provide Enhanced Access to its GIS Public Records at a reduced fee or no fee, in accordance with Section 3(1)(d) of the Enhanced Access to Public Records Act.
- DTMB may not waive or reduce fees that must be furnished to a providing Public Body subject to the terms of an intergovernmental agreement.

Disclaimer:

Recipients of Enhanced Access receive all information "AS IS." DTMB and its officials, employees, and agents make no warranties of any kind, whether express or implied, including but not limited to warranties of accuracy, ownership, title, fitness for a particular purpose, or as to a recipient's right to use any information provided through Enhanced Access. Recipients are solely responsible for investigating, responding to, litigating, and settling all claims with regard to information received through Enhanced Access, and agree as a condition of seeking and obtaining Enhanced Access to DTMB GIS Public Records, to protect, indemnify and hold DTMB harmless against any and all such claims, including the payment of any damages, costs or attorney fees.
