



FACULTY SENATE  
UNIVERSITY OF MICHIGAN

# Freedom of Information Act Guidance for Faculty

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**SPECIAL THANKS TO:**

The Climate Science  
Legal Defense Fund

*As indicated in this document, this document is not intended to provide legal advice and is provided for informational purposes only. The Office of the Vice President and General Counsel (OGC) is available to provide legal advice to the University and this document was not prepared with the assistance or support of the OGC.*

*This document was created by faculty for faculty, with the assistance of outside counsel. The authors, who do not speak on behalf of the university, were appointed by SACUA as the Protections for Faculty Working Group for the 2025-2026 academic year.*



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## Introduction:

This guidance document is intended to assist University of Michigan faculty in preparing for Freedom of Information Act (FOIA) requests. In recent years, the volume of such requests to faculty at universities across the country has increased dramatically.<sup>1</sup> The University of Michigan is not an exception to this trend. Often, such requests are filed by entities that are hostile to a faculty member's research, teaching, and/or external activities. Faculty should therefore be made aware of the potential misuse of these requests to chill research, teaching, or public engagement on politically sensitive topics.<sup>2</sup>

At present, the University of Michigan does not have detailed written guidance for faculty on this subject, nor are faculty educated about FOIA at the time of their onboarding. This lack of information poses considerable risks to faculty, as they may unknowingly make themselves unnecessarily vulnerable to malicious open records requests. At the same time, faculty are often not aware of the legal protections available to them, even if limited. The Protections for Faculty Working Group therefore recommends that the University distribute this document to 1) every faculty member currently employed at the institution and 2) every subsequent new hire at the start of their employment, to help them understand their FOIA rights and responsibilities.

The discussion below is organized into three parts. Part I provides a background on Michigan's FOIA and how the law may apply to faculty. Part II discusses how the University manages FOIA requests and the kinds of documents the University considers subject to FOIA. Part III contains recommendations to faculty for how to minimize the potential for FOIA misuse and disruption of their work. These recommendations are not legal advice and are not a substitute for consulting an attorney. The recommendations are for general informational purposes only.

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<sup>1</sup> See Brief for Amici Curiae American Association for the Advancement of Science et al. in Support of Appellants at 5–12, *Arizona Board of Regents v. Energy & Environment Legal Institute*, Arizona Court of Appeals No. 2CACV-2017-0002, filed July 17, 2017, <https://www.cslsf.org/wp-content/uploads/2023/05/2017-07-17-Brief-Amici-Curiae.pdf>.

<sup>2</sup> For an early critique of such misuse, see William Cronon, *A Tactic I Hope Republicans Will Rethink: Using the Open Records Law to Intimidate Critics*, Mar. 24, 2011, <http://scholarcitizen.williamcronon.net/2011/03/24/open-records-attack-on-academic-freedom/> (“It is chilling indeed to think that the Republican Party of my state has asked to have access to the emails of a lone professor in the hope of finding messages they can use to attack and discredit that professor.”).

## Part I: Background on Michigan’s Freedom of Information Act

Michigan’s Freedom of Information Act (FOIA) is a state law that allows nearly any person or entity to request documents and communications from a “public body.”<sup>3</sup> Originally enacted in 1976, the law is supposed to allow the public to obtain “full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.”<sup>4</sup> Although the law does not specifically include the University in its definitions of a “public body,” it does define the term as including any entity specifically “created by the state.” The Michigan courts have therefore held that FOIA applies to the University.<sup>5</sup>

The documents and communications subject to the Act are those that constitute “public records” of the body. Public records are defined as “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”<sup>6</sup> In the case of a state or local government agency, this might include records of fire code violations, building permits, correspondence between city officials, and crosswalk study design.<sup>7</sup>

What it means for the University to prepare, own, use, or possess a document in performance of an “official function” is a key question in figuring out what faculty records may be subject to FOIA. Unfortunately, when the state legislature enacted the law decades ago, it did not specify the meaning of the phrase “official function.” It has therefore been up to the Michigan state courts to determine what constitutes an official function of public bodies when litigation occurs over FOIA request denials. For example, the Michigan Court of Appeals recently upheld the denial of a FOIA request for private Facebook messages of a city mayor when there was no evidence that the city government used the page as part of its operations.<sup>8</sup> Likewise, the Michigan Court of Appeals upheld the denial of FOIA requests for high school teacher lesson plans, readings, video recordings, and assignments related to an ethnic and gender studies course, finding that individual teachers were not themselves a “public body”

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<sup>3</sup> The only persons not allowed to submit FOIA requests are those currently incarcerated.

<sup>4</sup> MCL 15.231(2)

<sup>5</sup> Booth Newspapers, Inc v. Univ of Mich Bd of Regents, 444 Mich 211, 225 (1993).

<sup>6</sup> MCL 15.232(i).

<sup>7</sup> For recent examples from the City of Ann Arbor, see FOIA Requests, <https://www.a2gov.org/city-clerk/foia-requests/>.

<sup>8</sup> Blackwell v. City of Livonia, 339 Mich App 495, 508 (2021).

and there was no indication that the school district had directed the teachers to prepare these materials nor used them.<sup>9</sup>

However, current case law in this area does not provide clear, bright line rules about how to define the term “official function” in the context of a university, particularly when it comes to faculty records.<sup>10</sup> For instance, a narrow reading of the statute might be the following: the official functions of the University involve managing a budget, creating departments and programs, admitting students, hiring faculty, and so forth. The Act would therefore only cover records concerning University directed activities, such as the development of curricula, distribution of research grants, notes from committee meetings, etc.<sup>11</sup> On the other hand, an expansive reading of the statute could encompass faculty text messages to one another about a speaker giving a workshop presentation or classroom recordings, as just a few examples.<sup>12</sup> In an ongoing lawsuit, litigants are arguing that a professor’s personal communications with external organizations – on a private email account – are public records because they concern the same general subject matter as the professor’s area of scholarship. It is still unclear whether a court might take a more narrow or expansive reading of the statute.

If a document is considered a public record, it may be exempt from disclosure if it falls under certain limited statutory exceptions.<sup>13</sup> The University may be reluctant to apply exemptions because it can be subject to fines, attorney’s fees, and other costs for failing to

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<sup>9</sup> The Court of Appeals left open the possibility that teaching materials could become subject to FOIA if the schools had possession of them and/or the school district had directed their production. See *Litkouhi v. Rochester Community Schools*, Case No. 364409 (Mich Ct App, 2024), [https://www.courts.michigan.gov/49da30/siteassets/case-documents/uploads/opinions/final/coa/20240222\\_c364409\\_32\\_364409.opn.pdf](https://www.courts.michigan.gov/49da30/siteassets/case-documents/uploads/opinions/final/coa/20240222_c364409_32_364409.opn.pdf).

<sup>10</sup> For more on Michigan court decisions regarding FOIA and public universities, see Climate Science Legal Defense Fund, *Research Protections in State Open Records Laws: An Analysis and Ranking 116 (2025)*, <https://www.csldf.org/wp-content/uploads/2025/11/2025Report.pdf>.

<sup>11</sup> This narrow interpretation of the Act is supported by a 2024 decision in the state Court of Appeals, which found that individual teachers’ records that were not retained or used by school administrators did not qualify as “public records” under FOIA and thus were not subject to disclosure. See *Litkouhi v. Rochester Community Schools*, Case No. 364409 (Mich Ct App, 2024), [https://www.courts.michigan.gov/49da30/siteassets/case-documents/uploads/opinions/final/coa/20240222\\_c364409\\_32\\_364409.opn.pdf](https://www.courts.michigan.gov/49da30/siteassets/case-documents/uploads/opinions/final/coa/20240222_c364409_32_364409.opn.pdf).

<sup>12</sup> An expansive reading of the Act might also define faculty themselves as a “public body.” This argument has been made in a recent FOIA lawsuit against the University but has so far not been adopted by Michigan courts.

<sup>13</sup> The most relevant exception for faculty is likely to be exceptions for research that is still unpublished. See *University of Michigan, FOIA, CRIIA (Confidential Research and Investment Information Act ) and U-M Sponsored Research*, <https://orsp.umich.edu/policies-procedures/foia-criia-confidential-research-and-investment-information-act-and-u-m> (last visited Mar. 12, 2026).

produce nonexempt public records.<sup>14</sup> This one-sided financial risk incentivizes Michigan universities to err on the side of producing records.

Legal scholars and commentators have observed that interpreting state FOIA laws to encompass individual faculty records poses a significant threat to academic freedom.<sup>15</sup> Faculty might understandably shy away from researching or teaching controversial topics if doing so might lead to FOIA requests for their research drafts, course materials, and emails.<sup>16</sup> Yet at present, the status quo in Michigan appears unlikely to change unless the University adopts a much more aggressive litigation posture in FOIA cases, puts pressure on the state legislature to amend the law, and/or more clearly defines the official functions of faculty.<sup>17</sup> Absent such steps, it is incumbent on faculty to protect themselves rather than assume that the University, the Michigan legislature, or the courts will do so.

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<sup>14</sup> Attorney General of Michigan, Freedom of Information Act Handbook, 23–24 (2023), <https://www.michigan.gov/ag/-/media/Project/Websites/AG/FOIA/FOIA-Handbook-January-2023.pdf?rev=1e665e0ce0de400386fd327310c13598>

<sup>15</sup> See Claudia Polsky, Open Records, Shuttered Labs: Ending Political Harassment of Public University Researchers, 66 UCLA L. REV. 208, 212 (2018); See also David Pozen, Freedom of Information Beyond the Freedom of Information Act, 165 U. PA. L. REV. 1097, 1227 (2017) (describing how FOIA can be used as a “low-cost tool to harass and embarrass” recipients of such requests).

<sup>16</sup> See Zach Greenberg, *Chilling Open Records Request Targets University of Washington Faculty, Threatens Academic Freedom*, FIRE, Nov. 15, 2022, <https://www.thefire.org/news/chilling-open-records-request-targets-university-washington-faculty-threatens-academic-freedom>.

<sup>17</sup> For example, Michigan could adopt language in its bylaws that stipulates faculty communications with external organizations are not part of the “official functions” of a professor. While a court would be the ultimate arbiter in the event of a lawsuit, having a consistent policy with detailed language would offer greater protection.

## Part II: How the University of Michigan Manages FOIA Requests for Faculty Records

### A. University FOIA Policies for Faculty

It is essential for faculty to prepare for a FOIA request before one is received. Once the University receives a FOIA request, all requested documents and communications must be preserved even if the University may ultimately deem them exempt from disclosure. You will be instructed not to remove any documents from your office, from your university computer, from your Michigan email, and/or from cloud-based storage. The following section describes how the University handles FOIA requests before turning to ways faculty can limit disruption to their life and work.

In recent briefings to faculty, the University has indicated that it considers the following faculty items subject to FOIA: emails, text messages, chat messages, work calendars, personnel files, travel records, expenses and reimbursements, drafts of scholarly works, data, and published research. Drafts of scholarly papers may be exempt from disclosure even though they are “public records” under the Confidential Research and Records Act, at least until such time as the author has an opportunity to publish the draft.<sup>18</sup>

In contrast, the university *does not* consider faculty teaching materials, such as lecture notes, and class recordings to be covered under FOIA. It is important to note that a court has not made a definitive ruling on this matter and may disagree with the University’s view that FOIA does not cover such documents.

Why faculty text messages would be subject to FOIA, but not teaching materials, is unclear. Teaching is a core function of the university and its faculty members. In contrast, the university does not provide faculty with cell phones and most faculty do not use their personal cell phones when performing research, teaching, or fulfilling their internal service commitments. Yet faculty who have received FOIA requests for their text messages have been asked to search, and produce, messages from their personal mobile devices. No rationale or reasoning, either based on relevant case law or language in the statute, has been given for the university’s approach.

The vague and seemingly arbitrary nature of University FOIA policies makes it difficult for faculty to 1) understand what materials in their possession might be subject to FOIA and 2) draw clear lines between their work for the institution and other professional or personal activities. This ad hoc approach is contrary to the American Association of University Professors (AAUP) recommendations to University General Counsels for responding to FOIA

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<sup>18</sup> MCL 390.1554.

requests, which state that inconsistent policies and ambiguities impose “serious costs on faculty trying to reduce their FOI-facilitated harassment risk.”<sup>19</sup>

## B. Procedures when a FOIA request Arrives for Faculty

When a FOIA request comes in for a faculty member’s records, the faculty member will receive an email and/or a phone call from the FOIA office notifying them of the request and asking them to search for potentially responsive documents that are in the faculty member’s possession. Based on recent faculty experiences with FOIA requests, the University will proceed in the following way: First, faculty will be asked to search for all items requested, regardless of their location and whether they will ultimately be deemed subject to FOIA. Then, after the faculty member identifies and describes the documents that turned up in the search, the FOIA office will determine whether the items are “work related” on a case-by-case basis. Finally, if the items are deemed work related, the entity that made the FOIA request will be asked to pay a deposit for the processing of potentially responsive materials. This deposit is given to the University, not the faculty member. Once the deposit is made, production of the materials will proceed. Entities with financial resources will not have a problem paying these deposits; individual requestors, however, may be deterred at that stage because of the cost.

When faculty are contacted by the FOIA office, they may face pressure to reply immediately because the university is under a statutory deadline to respond to a request within five business days.<sup>20</sup> However, the university regularly breaches this deadline because of the large number of requests compared to the small number of staff in the FOIA office.<sup>21</sup> Sometimes faculty are not contacted until days or even weeks after a request comes in. **Given this reality, if you are at all concerned about the request, it is recommended that you acknowledge the request but take an appropriate amount of time to seek outside counsel and review your records. Importantly, keep in mind that anything you say or write to the FOIA office may become public in response to a future FOIA request or if there is a lawsuit.** If you have concerns about a request for your records, you may want to speak to someone at an organization like the AAUP, FIRE, or the Climate Science Legal Defense Fund to receive advice about how to proceed. Remember that any written

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<sup>19</sup> AAUP Center for the Defense of Academic Freedom, Responding to Freedom of Information (FOI) Requests at Public Universities, July 8, 2024, [https://www.aaup.org/sites/default/files/Responding\\_to\\_FOI\\_Requests.pdf](https://www.aaup.org/sites/default/files/Responding_to_FOI_Requests.pdf).

<sup>20</sup> These responses generally would not include the specific documents, but instead acknowledge the FOIA request, explain whether the university has responsive documents, and discuss the need for payment to process them.

<sup>21</sup> Samuel Dodge, *Michigan Universities Struggle with FOIA requests. It May Be by Design, Experts Say*, MLIVE, Jan. 24, 2024, <https://www.mlive.com/news/ann-arbor/2024/01/michigan-universities-struggle-with-foia-requests-it-may-be-by-design-experts-say.html>.

communications about the request to other organizations or persons may become public in the event of a lawsuit, unless the communication is made to a lawyer providing legal advice.

If the University decides to grant the FOIA request in whole or in part, the faculty member could face significant demands on their time. The first step involves providing the FOIA office access to the requested materials. A faculty member may opt to share documents themselves with the FOIA office, such as over email or dropbox. However, if a request is extremely broad – such as all emails that contain the word “government” – a faculty member may wish to grant the university IT office access to their accounts to save time in pulling records from a computer, inbox, etc. However, even with IT involved, faculty may still need to take time away from their other work to carefully review the requested material for any personal information or unpublished drafts that should be exempt from disclosure.<sup>22</sup>

If a FOIA request is denied, in whole or in part, the requestor can file a lawsuit against the University. Any faculty member whose records – whether work or personal – are the subject of such a lawsuit should keep in mind that the lawyers handling the case represent the institution, not the faculty member. While ethically these lawyers should disclose the limits of their representation to faculty, they may neglect to do so. It is incumbent on faculty to decide whether it makes sense to seek their own legal advice.

In a situation where the records are personal and not held by the University, such as emails in a personal account or documents on a personal computer, a faculty member should strongly consider hiring their own counsel before communicating with the attorneys representing the University. Faculty should not sign an affidavit without consulting their own attorney. In a situation where the records are work related, faculty may still want to consult with their own attorney in order to ensure their own interests are protected, as the University’s approach to the litigation may not align with what is best for the faculty member.<sup>23</sup> If a case proceeds to discovery – which has occurred in recent years – faculty can be subpoenaed and/or deposed. Currently, the University’s policy is not to pay the cost of a faculty member’s individual attorney in FOIA lawsuits.

Please note that the University does not offer any allowance to alleviate the added time burden on faculty who are faced with FOIA requests. You will be expected to continue with your regular job duties on top of whatever hours are required to respond to a request and/or a FOIA lawsuit unless your department or school is willing to reduce your other

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<sup>22</sup> Kate Starbird, a professor and scholar of misinformation who has been subjected to numerous FOIA requests, has explained that FOIA laws “can be exploited by bad faith actors to harass government employees, both by siphoning off large amounts of time and resources to fulfill broad requests, and by mischaracterizing and/or weaponizing the documents that are obtained.” See Kate Starbird, CIP Public Records Exposed, <https://faculty.washington.edu/kstarbi/PRR-faq.html>.

<sup>23</sup> For an example of a faculty member needing to intervene in a case over records concerning their university work, see *American Tradition Institute v. UVA*, 287 Va. 330 (2014); *Union of Concerned Scientists*, Timeline: Legal Harassment of Michael Mann, Apr. 17, 2014, <https://www.ucs.org/resources/legal-harassment-michael-mann>.

obligations. Such accommodations are entirely discretionary and have been denied to faculty that asked for them after receiving multiple FOIA requests.

## Part III: Best Practices for Faculty to Protect Against FOIA Harassment

Given the University's position on what is subject to FOIA and the requirement to preserve all potentially responsive documents as soon as a request is made, faculty are strongly encouraged to take the following steps to preemptively protect their work and communications from inappropriate disclosure:

- 1) **Be mindful of your written communications**, especially anything you send through University email. Certain discussions are best conducted over the phone or in person, and even seemingly innocent and benign statements may be twisted or taken out of context by bad faith actors. Faculty communications obtained through FOIA have been used in litigation as well as legislative hearings, and you should assume your emails could become part of politicized proceedings in the present or future.
- 2) **Keep personal and work files completely separate**. Never store any personal files on your work computer that you would not want to be turned over in response to a FOIA request. Some faculty have been told by Michigan's IT staff that they can keep personal files on their work computer so long as they are marked in a folder labelled "personal." Do not do this. Only keep documents on your work computer that are necessary for performing your job duties and that you are comfortable having disclosed in response to a request.
- 3) **Do not use your Michigan email for any personal communications**. Some faculty do not have a personal email account and use their university account for all correspondence. This should be corrected immediately. If you have personal emails in your work account, forward or export them to a separate, personal account and then remove the copy from your Michigan account. It is strongly recommended that you do this even if you think you have never sent a sensitive personal email. Should the University receive a broad request for your communications, such as for any emails containing the word "tax" over the past decade, it will be enormously time consuming for you and the University to separate out your personal emails from work emails. Navigating this situation will be even more difficult if you and the University disagree about what's personal, or if there's a lawsuit where the University will have to defend withholding emails in your work account because they were deemed personal.
- 4) **Do not use your university phone number to make personal calls**. Some faculty have received requests for their work telephone records. The same advice about using your Michigan email account applies to your work phone. It will be time consuming and invasive to have to go call by call to redact personal communications.
- 5) **Do not use your personal email for any University duties**. This is the reverse of the above advice. Using your personal email does not shield communications from FOIA requests. For example, if you communicate with other members of a department

committee through your personal email and the University receives a FOIA request for records from that committee, you will be asked to search your personal email account and turn over anything that is potentially subject to disclosure.

- 6) Assuming you do not use your personal email for University matters, you should decline to search your personal accounts in response to a FOIA request. It is not necessary to search your personal emails so long as you are not doing University work through such an account. Be mindful that the University may choose to disclose any information you provide them about your personal emails in the event of a lawsuit.
- 7) Do not use your personal cell phone for any work-related communications. If you use your personal cell phone to communicate with colleagues or university staff about work matters, those communications may be subject to disclosure under FOIA. If faculty find it necessary to text to communicate about work-related matters, they should ask to have a text option enabled for their work phone number. The University provides an option to send text messages through the Zoom application, which can be downloaded on a computer or cell phone. For example, having a work text option may be valuable if you are co-teaching a class with a colleague and need to communicate with them on short notice. Just keep in mind that all those messages could be made public.
- 8) If you do not use your personal cell phone for University matters, you should decline to search your personal text messages in response to a FOIA request.

Most Importantly:

- 9) **Adopt your own record retention policy and discard old files and communications after a set period.** Some FOIA requests for faculty records have asked for all documents and communications that contain broad keywords over a period of years or decades. For example, a requestor could ask for all of a faculty member's emails to anyone with a ".edu" address over the past ten years. So long as the requestor pays the deposit, the University will require a faculty member to produce all such emails with few exceptions, such as those that may implicate student privacy. The best way to avoid the incredibly disruptive nature of responding to such a demand is to retain work records only for a specified period of time, such as 2 or 3 years. Faculty concerned about losing particular items could opt to keep only certain records after a set period but discard everything else. Be sure to consult applicable retention policies within your department or school, such as financial records policies or final exam retention policies, to clarify what records, if any, you are obligated to retain. Professors may otherwise freely delete emails and other records. If an email comes into your inbox and you want to immediately delete it, you can. If you wish to remove all emails older than a certain date, you can. If you wish to only retain the final versions of papers, teaching materials, etc., you can. **The important thing is to adopt general policies and practices and apply them consistently before a request arrives.**