

# COUNTY OF MISSAUKEE

## FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES

### 1. PURPOSE

- 1.1 The Michigan Freedom of Information Act, Public Act 442 of 1976 (“FOIA”), mandates disclosure of public records.
- 1.2 To fulfill this mandate, the County Board of Commissioners has established this policy and procedure for handling FOIA requests to ensure that members of the public receive non-exempt County public records that they may request, while not unduly burdening County government.
- 1.3 The Freedom of Information Act was amended significantly by Public Act 563 of 2014, effective July 1, 2015 (“Act 563”), primarily with respect to the methodology for calculating the charges and fees which may be charged pursuant to FOIA, and this replacement policy has been adopted to reflect those changes.

### 2. FOIA COORDINATOR

- 2.1 Section 6(1) of FOIA designates the Chair of the Missaukee County Board of Commissioners to be the FOIA Coordinator for the County. In accordance with Section 6 of FOIA, the following officials are designated to act on behalf of the Chair in accepting and processing requests for the County’s public records, and in approval and denial of a public record in accordance with FOIA.
- 2.2 The County Clerk/Register is designated to act on behalf of the Chair as FOIA Coordinator with respect to public records within the office of the County/Register of Deeds.
- 2.3 The County Sheriff, with the assistance of his Administrative Assistant, is designated to act on behalf of the Chair as FOIA Coordinator with respect to public records within the office of the County Sheriff.
- 2.4 The County Prosecutor is designated to act on behalf of the Chair as FOIA Coordinator with respect to public records for all other County Departments and Agencies.
- 2.5 The County Prosecutor may utilize staff members of the Prosecuting Attorney’s office to act on the Prosecuting Attorney’s behalf in accepting and processing requests for public records. The County Sheriff and County Clerk/Register may confer with the Prosecuting Attorney and staff in performing their duties with respect to administration of the FOIA for their respective departments.
- 2.6 In accordance with Section 3(1) of FOIA, in the event a written FOIA request is received by any employee of the County or member of the County Board of

Commissioners, a copy of the request shall be provided to the FOIA Coordinator or designee with respect to a particular department promptly after it is received.

- 2.7 As used in these Procedures and Guidelines, the term “FOIA Coordinator” shall mean the County Clerk/Register, Sheriff or Prosecuting Attorney, as applicable with respect to the records for which responsibility of FOIA Coordinator has been designated to such official.

### 3. **FOIA REQUESTS**

- 3.1 *Incarcerated Individuals.* Pursuant to Section 2(c) of FOIA, an individual serving a sentence of imprisonment in a state or county correctional facility in Michigan or any other state, or in a federal correctional facility, is not eligible to submit a FOIA request. Any requests so received shall not be processed, and the individual requesting it shall be so informed.
- 3.2 *Identification.* Requests shall sufficiently describe the public record by name, time frame and other relevant information to enable the FOIA Coordinator to identify and locate the record.
- 3.3 *Requests for Public Records.* All requests for public records (either to receive copies of such records or to inspect such records) made pursuant to FOIA shall be made in writing. All written requests for records pursuant to FOIA shall be processed by the FOIA Coordinator or designee.
- 3.4 *“Non-Paper” Media.* A request may ask that public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. The County shall not be required to comply with such a request if it lacks the typological capability to provide the requested records in the non-paper media in the particular instance, and the requestor shall be so informed.
- 3.5 *Requests to Review Records.* If a request is received to review records, arrangements shall be made available to inspect records during the County’s normal business hours and when the records can reasonably be made available. The person who wishes to inspect public records shall submit a request form describing the requested records prior to the County allowing the inspection of the records.
- 3.6 *Requests Made by Fax, E-mail or other Electronic Means.* These requests shall be deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made and shall be handled in the same manner as a written request in Section 3.3 above. If the request is submitted by e-mail and the e-mail request is held or quarantined in the County’s “spam” or “junk” e-mail folder (or other similar virus-protection software), the request shall be deemed received one business day after the County first became aware of the request. The FOIA Coordinator shall maintain a written log of when the request is delivered to the “spam” or “junk” e-mail folder and when the County becomes aware of the request in the folder.

### 3.7 *Informal Request*

3.7.1. The FOIA Coordinator or County staff may provide limited, readily identifiable public records without a written request in the case of easily fulfilled, non-repetitive requests for information. Examples of documents which may be provided without the necessity of a written FOIA request include, but are not limited to:

- a. Such documents which according to law are to be made available without the necessity of a FOIA request, such as entries in the current property tax assessment roll and a property tax assessment card.
- b. A single set of meeting minutes for a meeting held within the prior 12 months which is requested by specific date.
- c. Ordinances or resolutions which are identified by specific name or number.
- d. Regulations adopted by the County.
- e. Similar public records which can be readily provided.

3.7.2. County staff has the discretion to require a formal FOIA request.

3.7.3. Oral requests are not considered made under or subject to FOIA. Requesters have the option to make a written FOIA request, if so desired, in accordance with these Procedures.

## 4. **PROCESSING FOIA REQUESTS**

4.1 The FOIA Coordinator shall maintain a log of all written requests received, showing the nature and date of the request, determination of disposition, date of disposition and manner of final response to the FOIA request. Forms for utilization of FOIA procedures under these Procedures are available from the FOIA Coordinator.

4.2 *Time for Response.* The FOIA Coordinator shall, no more than five business days after the request has been made, unless a single extension of not more than 10 business days has been issued, or where the time limits have been agreed to upon in writing by the requesting person, provide one of the following responses:

4.2.1. Grant the Request. If the requested public records are not exempt from disclosure, the FOIA Coordinator shall submit copies of them to the requesting person, together with a County response form and a copy of the person's FOIA request.

4.2.2. Deny the Request. The FOIA Coordinator shall sign and send a response form to the requesting person, stating the reasons for denial, including an explanation of the requesting person's right to seek a non-mandatory appeal from the FOIA Coordinator's decision to the County Board of

Commissioners or an appeal of the decision to the Circuit Court. Failure to timely respond to the request constitutes a denial. Denial may be made because, among other reasons, the record does not exist, it cannot be sufficiently identified from the description contained in the request, or the record is exempt from disclosure.

4.2.3. Grant the Request in Part and Issue a Written Notice to the Requesting Person Denying Such a Request in Part. Public records which are partially exempt and partially subject to disclosure shall be separated or redacted, and the non-exempt material will be offered for copying or inspection. A general description of the separated or redacted information shall be provided to the requesting person, unless doing so would reveal the contents of the exempt information.

4.2.4. Extension. The FOIA Coordinator may issue a notice of extension for up to 10 business days. The notice shall state the reason for the extension and include an estimate as to when the FOIA Coordinator expects to respond to the FOIA request.

4.3 *General Requirements for FOIA Response.* FOIA requests shall be fulfilled in one or more of the following ways, depending on the request:

4.3.1. If inspection of records is requested, the County will provide a reasonable opportunity and facilities for inspection of the public records by the requesting person.

a. Original records shall not be marked, defaced, destroyed, or otherwise altered. A person examining public records may take notes and if so, shall bring to the examination only an erasable pencil with which to make notes. No pens or indelible writing instruments are allowed. No notes, marks or writing of any kind shall be made on the records themselves.

b. A County official or staff member shall be present at all times during the inspection of County records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the County's cost of this monitoring service, a fee shall be paid to the County for the personnel time involved, as provided in Article 5 of these Procedures.

c. Original records shall not be removed from the location provided for inspection. Original documents may be removed from and replaced in County files only by authorized County officials or personnel.

d. A requesting person may not remove records or files from the area provided for inspection. Copying of records for the requesting person shall be conducted only by authorized County officials or personnel.

- e. In some special situations in which inspection of records is requested, the FOIA Coordinator may determine, on a case-by-case basis, that only a copy of the record may be inspected. Situations where original records are likely to require copying prior to inspection include the following:
  - (1) The records include exempt information that must be redacted.
  - (2) The records are old or delicate, or contain information that could not easily be replicated.
  - (3) The records are in digital format or are part of a database not available for public inspection.
- f. A person requesting to inspect County records must make an appointment with the FOIA Coordinator. Appointments will be scheduled during the County's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator.
- g. The FOIA Coordinator will make reasonable efforts to allow a requesting person to inspect records for up to four hours per appointment; provided, however, that inspections will be cut short, postponed or rescheduled when necessary to avoid unreasonable interference with County staff's duties and responsibilities.

4.3.2. Provide copies of records if so requested.

4.3.3. On a request for records which are issued on a subscription basis, such as County Board of Commissioners meeting minutes on a six-month renewal subscription basis, a listing of the requesting person's name, address, records subscribed to, charge and expiration date of subscription shall be maintained by the FOIA Coordinator or his/her designee.

4.3.4. The FOIA does not require the County to make a compilation, summary or report of the requested public records or other requested information.

#### 4.4 *Collection of Fees and Deposits.*

4.4.1. The FOIA Coordinator, or his/her designee, shall determine actual cost of mailing, duplication and search time when compiling the records in accordance with Article 5 of these Procedures. The County's standardized "FOIA COST/COST ESTIMATE WORKSHEET" shall be used for this purpose.

4.4.2. If fees are charged, the FOIA Coordinator, or his/her designee, shall compute the charges and complete the detailed itemization of the fees.

- 4.4.3. A copy of the record shall not be released until the fee has been received or the person making the request demonstrates an inability to pay or is a recipient of public assistance as provided in Article 5 of these Procedures. If the fee does not exceed \$20, the FOIA Coordinator may, in his/her discretion, send an invoice with the copies.
- 4.4.4. If it is anticipated that a charge will exceed \$50.00, a good-faith deposit may be collected from the requesting person prior to the County beginning to fulfill the request for the records. An itemization of estimated fees on the County standardized "FOIA COST/COST ESTIMATE WORKSHEET" shall accompany the request. The time provided to respond shall commence upon receipt of the deposit.
- a. The deposit cannot exceed one-half of the total anticipated fees.
  - b. The County may require payment of a deposit equal to 100% of the estimated charge for fulfilling the FOIA request if the requesting person previously failed to pay the total amount due from a prior FOIA request to the County if:
    - (1) The final fee for the prior written request was not more than 105% of the estimated fee;
    - (2) The public records made available contained the information being sought in the prior written request and are still in the County's possession;
    - (3) The public records were made available to the requesting person, subject to payment, within the time frame required under FOIA; 90 days have passed since the County notified the requesting person in writing that the public records were available for pickup or mailing;
    - (4) The requesting person is unable to show proof of prior payment to the County for the prior records requested; and
    - (5) The County calculates a detailed itemization, as required under FOIA, that is the basis for the current written request's increased estimated fee deposit.
  - c. The County will not require an increased estimated fee deposit from a requesting person if any of the following apply:
    - (1) The requesting person is able to show proof of prior payment in full to the County; or
    - (2) The County is subsequently paid in full for the applicable prior written request; or

(3) Three hundred sixty-five days have passed since the requesting person made the written request for which full payment was not remitted to the County.

4.4.5. The FOIA Coordinator shall accept the payment for services rendered and issue a receipt for the same, or, in the few instances where deferred payment is permitted, prepare an invoice and forward it to the requesting person.

4.4.6. In accordance with Section 4(5) of FOIA, if a requesting person requests County records that are publicly available on the County's website, the County will notify the requesting person of the web address and location of such records. If the requesting person requests copies of these records, notwithstanding that the records are available on the website, the County shall provide copies of such records and will charge for copies only in accordance with Article 5 of these Procedures.

## 5. **CALCULATION OF FEES AND COSTS**

5.1 *In General.* The County may charge the requesting person for a public record search, actual mailing costs, copying charges, and the cost to separate exempt from non-exempt records in accordance with this Article 5 if the failure to charge a fee would result in unreasonably high costs to the County because of the nature of the request, and the County specifically identifies the nature of the unreasonably high costs. It is hereby determined that devoting more than fifteen minutes to responding to a FOIA request will result in unreasonably high costs to the County, unless the cost of such response is borne by the requesting person.

5.1.1. Cost of Duplication of Records. The County may charge for the labor costs directly associated with duplication of records, including making paper copies, making digital copies, or transferring digital public records to be given to the requesting person on non-paper physical media or through the Internet or other electronic means as stipulated by the requesting person.

5.1.2. Cost of Search, Location and Examination of Records. The County may charge for the labor costs directly associated with searching for, locating, and examining public records in conjunction with receiving and fulfilling a FOIA request.

5.1.3. Cost of Separating Exempt from Non-Exempt Records. The County may charge for the labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt material from nonexempt material. The review and separation of exempt from non-exempt material may be conducted by a County official or employee or, if necessary, outside legal counsel.

a. For services performed by a County official or employee, the County will charge in accordance with Section 5.1.4 of these Procedures.

- b. For services performed by outside legal counsel, as determined by the FOIA Coordinator on a case-by-case basis, the County may charge the legal counsel's time; provided, however, that such time to be charged shall not exceed an amount equal to six times the then-current State minimum hourly wage rate determined under Section 4 of the Workforce Opportunity Wage Act, Act 138 of the Public Acts of Michigan of 2014 ("Act 138"), as that rate may change from time to time. As of the date of adoption of these Procedures, that wage rate is \$8.15 per hour. If the rate increases under Act 138, the rate charged under these Procedures shall automatically change without action by the County Board of Commissioners or amendment of these Procedures. In charging such time for outside legal counsel, the County shall provide notice to the requesting person of the name of the contracted person or firm in the County's detailed itemization of costs required by the Act. The charges for such services will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward.
- c. No charge will be made for the redaction of documents if the County previously redacted the public record in question and the redacted version is still in the County's possession.
- d. The County shall itemize both the hourly wage and the number of hours included in the costs charged.

5.1.4. Calculation of Labor Costs. The County will charge the hourly wage of its lowest-paid employee capable of performing the tasks identified in 5.1.1, 5.1.2, or 5.1.3.a., above, regardless of whether that person is available or who actually performs the labor. The County will estimate such labor charges. The labor charges will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward. The County shall itemize both the hourly wage and the number of hours charged for these costs. The County shall include in the applicable labor charge an amount not to exceed one-half of the applicable hourly wage to cover (or partially cover) the cost of the fringe benefits (if any) for the lowest-paid employee; provided, however, that such amount shall not exceed the actual costs of the fringe benefits. Overtime charges for the applicable employee will not be charged unless the requesting person agrees in writing to pay such charges. The 50% multiplier used to account for the lowest-paid employee's fringe benefits shall be included in the detailed itemization of costs provided by the County to the requesting person.

5.1.5. Costs for Mailing of Records. The County will charge the actual cost of mailing, if any, for sending the records in a reasonably economical and justifiable manner, to the requesting person. The County will not send documents to the requesting person via overnight delivery service or expedited shipping (or obtain shipping insurance on such mailing) unless the

requesting person specifically requests such services in writing and agrees to pay for such costs.

5.1.6. Copying Charges. The incremental costs of duplication or publication shall be charged at 10 cents per 8 1/2" x 11" or 8 1/2" x 14" sheet of paper, or such greater amount permitted by FOIA. The County may copy records using double-sided printing, if such capability is available and cost-effective. If the public records must be sent to a commercial copy center for copying, the requesting person shall reimburse the County for the County's actual charges.

5.1.7. Copies of Specialty Documents/Formats. The County has limited in-house capabilities for copying photographs, audio- or video-tapes, microforms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site or reproduced in electronic means (and on an electronic storage device, such as a USB drive, CD-ROM, or other device for storage of electronic data), the FOIA Coordinator will determine and assess those costs. If a County official or employee is required to deliver and/or pick up the public records and/or copies of public records, the labor hours (calculated in accordance with Section 5.1.4, above), spent and applicable mileage (at the then-current IRS mileage reimbursement rate) will be included in the requesting person's charges for the public records.

5.2 *Itemization of Charges.* Fees charged for FOIA requests shall be set forth in a form for detailed itemization of the fees in the form of the "FOIA COST/COST ESTIMATE WORKSHEET" as approved by the County from time to time. That detailed itemization shall also be used and provided to the requestor when a good-faith deposit is required in accordance with these procedures.

5.3 *Fee Waiver.* The County may waive all or a portion of the fees for the search and copying of records if the County determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee in case of indigency, or a non-profit agency formally designated to carry out the activities of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as provided in Section 4(2) of the Act.

## 6. **RECORD RETENTION**

6.1 The FOIA Coordinator shall maintain all FOIA requests on file for at least than one year.

## 7. **EXEMPTIONS TO FOIA REQUEST**

7.1 The FOIA coordinator may exempt from disclosure any records identified as exempt from disclosure in Section 13 of the FOIA.

- 7.2 The FOIA coordinator shall exempt from disclosure:
- 7.2.1. That portion of any public record disclosing a person's social security number.
  - 7.2.2. Information protected under the Family Educational Rights and Privacy Act of 1974.
  - 7.2.3. Minutes of any closed session meeting, disclosure of which is prohibited by the Open Meetings Act.
  - 7.2.4. Any other public record, information or material, the disclosure of which is prohibited by law.

## 8. APPEALS

- 8.1 *Appeal of Denial of Request.* If a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the following:
- 8.1.1. The appeal must be submitted in writing to the County Board of Commissioners, to the attention of the Chair of the County Board of Commissioners.
  - 8.1.2. The written appeal must specifically state the word "appeal" and identify the reason or reasons advanced for the reversal or modification of the denial.
  - 8.1.3. If a written appeal is received by the Chair of the County Board of Commissioners consistent with these Procedures and the Act, the County Board of Commissioners shall either: (a) place the appeal on the agenda for the next regularly scheduled meeting, to be decided within 10 business days thereafter; or (b) schedule a special meeting to consider the appeal, which special meeting should be held no later than 10 business days following the next regularly scheduled meeting.
  - 8.1.4. The County Board of Commissioners may deliberate and shall take one of the following actions in response to the filing of an appeal:
    - a. Reverse the denial.
    - b. Issue a written notice to the requesting person, affirming the denial.
    - c. Reverse the denial in part and issue a written notice to the requesting person affirming the denial in part.
    - d. Under unusual circumstances, issue a notice extending not more than 10 business days the period during which the County Board of Commissioners shall respond to the written appeal. Only one written notice extending the response time is allowed.

- 8.2 *Fee Appeal.* A requesting person may appeal the amount of a fee or deposit if that fee or deposit exceeds the amount permitted under these Procedures and FOIA.
- 8.2.1. An appeal on the amount of the fee may be made to the County Board of Commissioners in accordance with the provisions of Section 8.1, above. In the fee appeal, the requesting person must specifically include the word “appeal” and identify how the required fee exceeds the amount permitted under these Procedures or the Act.
- 8.2.2. Notwithstanding Section 8.2.1, above, and in accordance with FOIA, a requesting person may commence a civil action in the Circuit Court for a fee reduction; provided, however, that such appeal must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the County Board of Commissioners. If the requesting person files a fee appeal with the Circuit Court, the County will not complete the processing of the written request for the public record at issue until the court resolves the fee dispute.
- 8.2.3. Within 10 business days after receiving a written appeal under this Section 8.2, the County Board of Commissioners shall do one of the following:
- a. Waive the fee.
  - b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of FOIA and these Procedures that supports the remaining fee. The determination shall include a certification from the Chair of the County Board of Commissioners, on behalf of the County Board of Commissioners, that the statements in the determination are accurate and that the reduced fee amount complies with the Procedures and Section 4 of the Act.
  - c. Uphold the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Chair of the County Board of Commissioners, on behalf of the County Board of Commissioners, that the statements in the determination are accurate and that the fee amount complies with the Procedures and Section 4 of the Act.
  - d. Issue a notice extending for not more than 10 business days the period during which the County Board of Commissioners must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The County Board of Commissioners shall not issue more than one notice of extension for a particular written appeal.

8.2.4. In accordance with FOIA, the County Board of Commissioners is not considered to have received a written fee appeal until the first regularly scheduled meeting of the County Board of Commissioners following submission of the written appeal.

8.2.5. In accordance with Section 4(13) of FOIA, a deposit required to be paid by the County is considered a “fee.”

8.3 *Civil Action.* An appeal from a determination by the FOIA Coordinator or from a decision of the County Board of Commissioners may be taken to the Circuit Court.

## 9. **AMENDMENTS TO PROCEDURES**

9.1 The County Board of Commissioners may amend or supplement this policy, from time to time, in the County Board of Commissioners’ sole discretion.

## 10. **FORMS**

10.1 The County FOIA Coordinators and staff may prepare appropriate forms, reflecting the amendments to FOIA made by Act 563, to assist and standardize responses to FOIA requests.

## 11. **AVAILABILITY OF PROCEDURES; SUMMARY**

11.1 A copy of these Procedures and a summary of these Procedures shall be available at the County office and shall be posted on the County’s website [www.missaukee.org](http://www.missaukee.org), in accordance with the FOIA.

## 12. **EFFECTIVE DATE**

12.1 This Freedom of Information Act Procedures and Guidelines became effective on July 1, 2015.