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**MICHIGAN ASSOCIATION OF COUNTY TREASURERS**

**February 8, 2016**

**The New FOIA Requirements**

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**Attachment**

- 1 FOIA Procedures and Guidelines
- 2 Public Summary of FOIA Procedures and Guidelines
- 3 FOIA Forms
- 4 FOIA Detailed Cost Itemization Form
- 5 Public Records Exempt From FOIA Disclosure
- 6 FOIA - Selected Other Statutory Exemptions

# **ATTACHMENT 1**



The County is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other County staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves. The FOIA Coordinator shall keep a copy of all written requests for public records received by the County on file for a period of at least one year.

The County will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. If it does not, the County cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance.

A copy of this Procedures and Guidelines document and the County's Written Public Summary must be publicly available by providing free copies both in the County's response to a written request and upon request by visitors at County offices.

This Procedures and Guidelines document and the County's Written Public Summary will be maintained on the County's website at: [\[REDACTED\]](#), so a link to those documents will be provided in lieu of providing paper copies of those documents.

## **Section 2: Requesting a Public Record**

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the County may be submitted on the County's FOIA Request Form, in any other form of writing (letter, fax, email, etc).

If a person makes a verbal, non-written request for information believed to be available on the County's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A request must sufficiently describe a public record so as to enable County personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail to any County office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or other otherwise provided to him or her in digital form in lieu of paper copies. The County will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by [\[REDACTED\]](#) County on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **Section 3: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, the County will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The County will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the County needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the County's website.

#### ***When a request is granted:***

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the County's website at: [\[REDACTED\]](#), a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the County will require a good-faith deposit pursuant to Section 4 of this policy before processing the request.

In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the County to process the request and also provide a best efforts estimate of a time frame it will take the County to provide the records to the requestor. The best efforts estimate shall be nonbinding on the County, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

#### ***When a request is denied or denied in part:***

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the County; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and

- An explanation of the person's right to submit an appeal of the denial to either the County Board of Commissioners, or seek judicial review in the [REDACTED] County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

***Requests to inspect public records:***

The County shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect County records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal County operations.

***Requests for certified copies:***

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

**Section 4: Fee Deposits**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the County in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the County's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the County to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the County; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the County;
- The County is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the County.

## Section 5: Calculation of Fees

A fee may be charged for the labor cost of copying/duplication.

A fee will *not* be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information *unless* failure to charge a fee would result in unreasonably high costs to the County because of the nature of the request in the particular instance, and the County specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are “unreasonably high” when they are excessive and beyond the normal or usual amount for those services compared to the costs of the County’s usual FOIA requests, not compared to the County’s operating budget.

The following factors shall be used to determine an unreasonably high cost to the County:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one County department or whether various County offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan FOIA statute permits the County to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the County.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the County.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the County’s website if you ask for the County to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the County’s website if you ask for the County to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid County employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The County may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.

- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the County has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The County will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the County's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The County will provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The County may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the County must:

- Reduce the labor costs by 5% for each day the County exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
  - The County's late response was willful and intentional,
  - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
  - The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

## **Section 6: Waiver of Fees**

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The County Board of Commissioners may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

## **Section 7: Discounted Fees**

### ***Indigence***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the County twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

### ***Nonprofit organization advocating for developmentally disabled or mentally ill individuals***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
  - Is made directly on behalf of the organization or its clients.
  - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
  - Is accompanied by documentation of its designation by the state, if requested by the public body.

## **Section 8: Appeal of a Denial of a Public Record**

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 County Board of Commissioners, by filing an appeal of the denial with the office of the County Board of Commissioners.

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The County FOIA Appeal Form (To Appeal a Denial of Records), may be used.

The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Board of Commissioners meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the County Board of Commissioners will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or

- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the County Board of Commissioners shall respond to the written appeal. The County Board of Commissioners shall not issue more than 1 notice of extension for a particular written appeal.

If the County Board of Commissioners fails to respond to a written appeal, or if the County Board of Commissioners 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 nondisclosure by commencing a civil action in Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the County Board, he or she may file a civil action in [REDACTED] County Circuit Court within 180 days after the County's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the County 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 of the court may be punished as contempt of court.

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 attorneys' fees, costs, and disbursements. If the person or County prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the County has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the County 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 the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

### **Section 9: Appeal of an Excessive FOIA Processing Fee**

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the County to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the County Board of Commissioners by submitting a written appeal for a fee reduction to the office of the County Board of Commissioners.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The County FOIA Appeal Form (To Appeal an Excess Fee) may be used.

The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Board of Commissioners meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the County Board of Commissioners will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or

- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the County Board of Commissioners will respond to the written appeal. The County Board of Commissioners shall not issue more than 1 notice of extension for a particular written appeal.

Where the County Board of Commissioners reduces or upholds the fee, the determination must include a certification from the County Board of Commissioners that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the County Board's determination of an appeal, the requesting person may commence a civil action in [REDACTED] County Circuit Court for a fee reduction.

If a civil action is commenced against the County for an excess fee, the County is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless *one* of the following applies:

- The County does not provide for appeals of fees,
- The County Board of Commissioners failed to respond to a written appeal as required, or
- The County Board of Commissioners issued a determination to a written appeal.

If a court determines that the County required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of 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.

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 attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the County has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the County 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.

#### **Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these FOIA Procedures and Guidelines conflict with previous FOIA policies promulgated by County Board of Commissioners or the County Administration these FOIA Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the County Board of Commissioners or the County Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these FOIA Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the County Board of Commissioners or the County Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules

are consistent with State law. The FOIA Coordinator shall inform the County Board of Commissioners of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

**Section 11: Appendix of [REDACTED] County FOIA Forms**

- Request for Public Records Form
- Notice to Extend Response Time Form
- Notice of Denial Form
- Detailed Cost Itemization Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form

## **ATTACHMENT 2**

## **Public Summary of FOIA Procedures and Guidelines**

**It is the public policy of this state that all persons (except those persons incarcerated in state or local correctional facilities) are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.**

**The people shall be informed so that they may fully participate in the democratic process.**

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the County's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the County's FOIA Procedures and Guidelines. For more details and information, copies of the County's FOIA Procedures and Guidelines are available at no charge at any County office and on the County's website: \_\_\_\_\_.

### **1. How do I submit a FOIA request to the County?**

- A request must sufficiently describe a public record so as to enable the County to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the County in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the County may be submitted on the County's FOIA Request Form, in any other form of writing (letter, fax, email, etc).
  - No specific form to submit a written request is required. However a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the County's website at \_\_\_\_\_, and at the County Board of Commissioners' Office ("County BOC Office"), \_\_\_\_\_ [address].
- Written requests may be delivered to the County BOC Office in person or by mail: Attn: \_\_\_\_\_ [name], FOIA Coordinator, \_\_\_\_\_ [address]
- Requests may be faxed to: \_\_\_\_\_ [fax number]. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.
- Requests may be emailed to: \_\_\_\_\_ [email address]. To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.

### **2. What kind of response can I expect to my request?**

- Within 5 business days after receiving a FOIA request the County will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The County will respond to your request in one of the following ways:
  - - Grant the request,

- Issue a written notice denying the request,
  - Grant the request in part and issue a written notice denying in part the request,
  - Issue a notice indicating that due to the nature of the request the County needs an additional 10 business days to respond, or
  - Issue a written notice indicating that the public record requested is available at no charge on the County's website
- If the request is granted, or granted in part, the County will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.
  - If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the County will require a deposit before processing the request.

### 3. What are the County's deposit requirements?

- If the County has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the County will require that you provide a deposit in the amount of 50% of the total estimated fee. When the County requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.
- If the County receives a request from a person who has not paid the County for copies of public records made in fulfillment of a previously granted written request, the County will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when **all** of the following conditions exist:
  - The final fee for the prior written request is not more than 105% of the estimated fee;
  - The public records made available contained the information sought in the prior written request and remain in the County's possession;
  - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the County to provide the records;
  - Ninety (90) days have passed since the County notified the individual in writing that the public records were available for pickup or mailing;
  - The individual is unable to show proof of prior payment to the County; and
  - The County has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The County will not require the 100% estimated fee deposit if any of the following apply:
  - The person making the request is able to show proof of prior payment in full to the County;
  - The County is subsequently paid in full for all applicable prior written requests; or
  - Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the County.

### 4. How does the County calculate FOIA processing fees?

The Michigan FOIA statute permits the County to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the County.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the County.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the County's website if you ask for the County to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the County's website if you ask for the County to make copies.
- The cost to mail or send a public record to a requestor.

### **Labor Costs**

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid County employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. County may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage)

A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the County. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the County's usual FOIA requests, because of the nature of the request in the particular instance. The County must specifically identify the nature of the unreasonably high costs in writing.

### **Copying and Duplication**

The County must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

### ***Non-paper Copies on Physical Media***

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the County has the technological capability necessary to provide the public record in the requested non-paper physical media format.

### ***Paper Copies***

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper.
- Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.

### **Mailing Costs**

- The cost to mail public records will use a reasonably economical and justified means.
- The County may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless you request it.

### **Waiver of Fees**

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The County Board of Commissioners may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

### **5. How do I qualify for an indigence discount on the fee?**

The County will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the County twice during the calendar year; or

- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement. For your convenience, the County has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the County FOIA Request Form, which is available on the County's website: [REDACTED].

## **6. May a nonprofit organization receive a discount on the fee?**

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- Is made directly on behalf of the organization or its clients.
- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

## **7. How may I challenge the denial of a public record or an excessive fee?**

### **Appeal of a Denial of a Public Record**

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the County Board of Commissioners by filing a written appeal of the denial with the office of the County Board of Commissioners.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial. You may use the County FOIA Appeal Form (To Appeal a Denial of Records), which is available on the County's website: [REDACTED].

The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Commission meeting following submission of the written appeal. Within 10 business days of receiving the appeal the County Board of Commissioners will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the County Board of Commissioners, you may file a civil action in the County Circuit Court within 180 days after the County's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the County acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

## Appeal of an Excess FOIA Processing Fee

If you believe that the fee charged by the County to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the County Board of Commissioners by filing a written appeal for a fee reduction to the office of the County Board of Commissioners.

The appeal must specifically state the word “appeal” and identify how the required fee exceeds the amount permitted. You may use the County FOIA Appeal Form (To Appeal an Excess Fee), which is available at the County Building and on the County’s website: [\[REDACTED\]](#).

The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Commission meeting following submission of the written appeal. Within 10 business days after receiving the appeal, the County Board of Commissioners will respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the County Board of Commissioners will respond to the written appeal.

Within 45 days after receiving notice of the County Board of Commissioner’s determination of the processing fee appeal, you may commence a civil action in the County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys’ fees, costs and disbursements. If the court determines that the County acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

# **ATTACHMENT 3**



**Records Located on Website**

If the County directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the County must notify the Requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the County must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the County has included the website address for a record in its written response to the Requestor and the Requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the County must provide the public records in the specified format (if the County has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

**Request for Copies/Duplication of Records on County Website**

I hereby stipulate that, even if some or all of the records are located on the County website, I am requesting that the County make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature

Date

**Overtime Labor Costs**

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

**Consent to Overtime Labor Costs**

I hereby agree and stipulate to the County using overtime wages in calculating the following labor costs as itemized in the following categories:

- 1.  Labor to copy/duplicate
- 2.  Labor to locate
- 3a.  Labor to redact
- 3b.  Contract labor to redact
- 6b.  Labor to copy/duplicate records already on County's website

Requestor's Signature

Date

**Request for Discount: Indigence**

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a Requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
- (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

**Office Use:**  Affidavit Received  Eligible for Discount  Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

**Request for Discount: Nonprofit Organization**

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.
- (ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.
- (iii) Is accompanied by documentation of its designation by the state, if requested by the County.

**Office Use:**  Documentation of State Designation Received  Eligible for Discount  Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931:

Date:

Requestor's Signature:

County: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.

County [Address]  
Phone:

Notice to Extend Response Time for FOIA Request  
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via:  Email  Fax  Other Electronic Method  
Date of This Notice: \_\_\_\_\_ Date delivered to junk/spam folder: \_\_\_\_\_  
(Please Print or Type) Date discovered in junk/spam folder: \_\_\_\_\_

Table with 3 columns: Name, Firm/Organization, Street, City, Phone, Fax, Email, State, Zip

Request for:  Copy  Certified copy  Record inspection  Subscription to record issued on regular basis  
Delivery Method:  Will pick up  Will make own copies onsite  Mail to address above  Email to address above  
 Deliver on digital media provided by the County: \_\_\_\_\_

Record(s) You Requested: (Listed here or see attached copy of original request) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We are extending the date to respond to your FOIA request for no more than 10 business days, until \_\_\_\_\_ (month, day, year).  
Only one extension may be taken per FOIA request. If you have any questions regarding this extension, contact \_\_\_\_\_ at \_\_\_\_\_

Estimated Time Frame to Provide Records: \_\_\_\_\_ (days or date)  
The time frame estimate is nonbinding upon the County, but the County is providing the estimate in good faith. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

Reason for Extension:

- 1. The County needs to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to your request. Specifically, the County must: \_\_\_\_\_
- 2. The County needs to collect the requested public records from numerous field offices, facilities, or other establishments that are located apart from the County office. Specifically, the County must coordinate documents from the following locations: \_\_\_\_\_
- 3. Other (describe): \_\_\_\_\_

Signature of FOIA Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

**[This page left blank on purpose.]**

County: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.

County  
[Address]  
Phone:

Denial Form  
17-15-20151

### Notice of Denial of FOIA Request Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via:  Email  Fax  Other Electronic Method  
Date of This Notice: \_\_\_\_\_ Date delivered to junk/spam folder: \_\_\_\_\_  
(Please Print or Type) Date discovered in junk/spam folder: \_\_\_\_\_  
Request for:  Copy  Certified copy  Record inspection  Subscription to record issued on regular basis

Name	Phone
Firm/Organization	Fax
Street	Email
City	State Zip

Delivery Method:  Will pick up  Will make own copies onsite  Mail to address above  Email to address above  
 Deliver on digital media provided by the County: \_\_\_\_\_

Record(s) You Requested: (Listed here or see attached copy of original request) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All OR  Part of your request for records has been denied. Please refer to this form for an explanation. If you have any questions regarding this denial, contact \_\_\_\_\_ at \_\_\_\_\_

#### Reason for Denial:

1. Exempt from Disclosure: This item is exempt from disclosure under FOIA Section 13, Subsection \_\_\_\_\_ (insert number), because: \_\_\_\_\_  
\_\_\_\_\_

2. Record Does Not Exist: It is hereby certified, pursuant to Section 5(5)(b) of the FOIA, that your FOIA request is denied because, to the best of my knowledge, information and belief, no public records exist as of \_\_\_\_\_, 20\_\_\_\_, under the name(s) set forth in your request, nor under another name reasonably known to the County. If you believe this record does exist, provide a description that will enable us to locate the record: \_\_\_\_\_  
\_\_\_\_\_

3. Redaction: A portion of the requested record had to be separated or deleted (redacted) as it is exempt under FOIA Section 13, Subsection \_\_\_\_\_ (insert number), because: \_\_\_\_\_  
\_\_\_\_\_

A brief description of the information that had to be separated or deleted: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the County Board of Commissioners or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the Court determines that the County has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (See back of this form for additional information on your rights.)

Signature of FOIA Coordinator:

Date:

## FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

**15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body 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 the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015

County: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.

\_\_\_\_\_ County  
\_\_\_\_\_ [Address]  
Phone: \_\_\_\_\_

Denial Appeal Form

## FOIA Appeal Form—To Appeal a Denial of Records

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

**Request No.:** \_\_\_\_\_ **Date Received:** \_\_\_\_\_ **Check if received via:**  Email  Fax  Other Electronic Method  
**Date of This Notice:** \_\_\_\_\_ **Date delivered to junk/spam folder:** \_\_\_\_\_  
*(Please Print or Type)* **Date discovered in junk/spam folder:** \_\_\_\_\_

Name	Phone
Firm/Organization	Fax
Street	Email
City	State Zip

**Request for:**  Copy  Certified copy  Record inspection  Subscription to record issued on regular basis  
**Delivery Method:**  Will pick up  Will make own copies onsite  Mail to address above  Email to address above  
 Deliver on digital media provided by the County: \_\_\_\_\_

**Record(s) You Requested:** *(Listed here or see attached copy of original request)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Reason(s) for Appeal:**

The appeal must identify the reason(s) for the denial. You may use this form or attach additional sheets:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Requestor's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**County Response:**

The County must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

**County Extension:** We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until \_\_\_\_\_  
*(month, day, year)*. Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: \_\_\_\_\_  
\_\_\_\_\_

If you have any questions regarding this extension, contact: \_\_\_\_\_

**County Determination:**

Denial Reversed  Denial Upheld  Denial Reversed in Part and Upheld in Part

The following previously denied records will be released: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Notice of Requestor's Right to Seek Judicial Review**

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the County Board of Commissioners or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the Court determines that the County has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (See back of this form for additional information on your rights.)

**Signature of FOIA Coordinator:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

**15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body 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 the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015.

County: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.

County  
[Address]  
Phone: \_\_\_\_\_

Fee Appeal Form

## FOIA Appeal Form—To Appeal an Excess Fee

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via:  Email  Fax  Other Electronic Method  
Date of This Notice: \_\_\_\_\_ Date delivered to junk/spam folder: \_\_\_\_\_  
(Please Print or Type) Date discovered in junk/spam folder: \_\_\_\_\_

Name	Phone
Firm/Organization	Fax
Street	Email
City	State Zip

**Request for:**  Copy  Certified copy  Record inspection  Subscription to record issued on regular basis  
**Delivery Method:**  Will pick up  Will make own copies onsite  Mail to address above  Email to address above  
 Deliver on digital media provided by the County: \_\_\_\_\_

**Record(s) You Requested:** (Listed here or see attached copy of original request) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Reason(s) for Appeal:

The appeal must specifically identify how the required fee(s) exceed the amount permitted. You may use this form or attach additional sheets:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Requestor's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### County Response:

The County must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

**County Extension:** We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until \_\_\_\_\_ (month, day, year). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: \_\_\_\_\_  
\_\_\_\_\_

If you have any questions regarding this extension, contact: \_\_\_\_\_

**County Determination:**  Fee Waived  Fee Reduced  Fee Upheld

Written basis for County determination: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10a of the Michigan Freedom of Information Act, MCL 15.240a, to appeal a FOIA fee that you believe exceeds the amount permitted under the County's written Procedures and Guidelines to the County Board of Commissioners or to commence an action in the Circuit Court for a fee reduction within 45 days after receiving the notice of the required fee or a determination of an appeal to the County Board of Commissioners. If a civil action is commenced in court, the County is not obligated to compete processing the request until the Court resolves the fee dispute. If the Court determines that the County required a fee that exceeded the permitted amount, the Court shall reduce the fee to a permissible amount. (See back of this form for additional information on your rights.)

**Signature of FOIA Coordinator:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**FREEDOM OF INFORMATION ACT (EXCERPT)**  
**Act 442 of 1976**

**15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.**

Sec. 10a.

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 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 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section 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 attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body 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.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

**History:** Add. 2014, Act 563, Eff. July 1, 2015

# **ATTACHMENT 4**

County: Keep original and provide copies of both sides of each sheet, along with Public Summary, to Requestor at no charge.

**County**  
[Address]  
Phone: \_\_\_\_\_

Detailed Cost  
Itemization

## Freedom of Information Act Request Detailed Cost Itemization

Date: \_\_\_\_\_ Prepared for Request No.: \_\_\_\_\_ Date Request Received: \_\_\_\_\_

**The following costs are being charged / estimated in compliance with Section 4 of the Michigan Freedom of Information Act, MCL 15.234, according to the County's FOIA Procedures and Guidelines. If the County is seeking a 50% deposit prior to providing the public records sought, the estimate is itemized on this form, lines 1-5 below.**

If all or a portion of the requested information is available on the County's website, the County is required to tell you it is available on the website and, where practicable, include a specific webpage address where the information is available. In this case

- None
- Some
- All

of the requested material can be found at the following webpage(s):

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If the webpage is all the information you need, it is provided without charge. If, however, you still wish to receive a copy of material from the webpage, please let us know. The FOIA charges will apply if the County is required to produce copies of material from the webpage.

Requestor has stipulated that some / all of the requested records that are already available on the County's website but requests they be provided in a paper or non-paper physical digital medium and acknowledges that providing the records in that format shall be subject to the County's normal charges outlined below.

**1. Labor Cost to Locate:**

This is the cost of labor directly associated with the necessary searching for, locating, and examining public records in conjunction with receiving and fulfilling a granted written request. **This fee is being charged because failure to do so will result in unreasonably high costs to the County because of the nature of the request in this particular instance, specifically:** \_\_\_\_\_

The County will not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in **15-minute time increments**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.*

Hourly Wage Charged: \$ \_\_\_\_\_

Charge per ¼ hour: \$ \_\_\_\_\_

OR

Hourly Wage with Fringe Benefit Cost: \$ \_\_\_\_\_

Multiply the hourly wage by the percentage multiplier: \_\_\_\_\_ %  
(up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per ¼ hour: \$ \_\_\_\_\_

*[For records already available on the County's website that Requestor has requested in a paper or non-paper digital medium, greater than the 50% limitation, not to exceed the actual costs may be used to calculate Fringe Benefit Costs to be added to the hourly wage].*

Overtime rate charged as stipulated by Requestor (overtime is not used to calculate the fringe benefit cost)

To figure the number of increments, take the number of minutes: \_\_\_\_\_, divide by 15-minute increments, and round down. Enter below:

Number of increments

x \_\_\_\_\_ =

1. Labor Cost

\$ \_\_\_\_\_

**2. Labor Cost for Copying / Duplication**

This is the cost of labor directly associated with duplication of publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the Internet or other electronic means as stipulated by the requestor.

This shall not be more than the hourly wage of the County's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in **15-minute time increments as set by the County Board of Commissioners** (for example: 15-minutes or more); all partial time increments must be rounded down. *If the number of minutes is less than one increment, there is no charge.*

Hourly Wage Charged: \$ \_\_\_\_\_

Charge per ¼ hour: \$ \_\_\_\_\_

OR

Hourly Wage with Fringe Benefit Cost: \$ \_\_\_\_\_

Multiply the hourly wage by the percentage multiplier: \_\_\_\_\_ %  
(up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per ¼ hour: \$ \_\_\_\_\_

*[For records already available on the County's website that Requestor has requested in a paper or non-paper digital medium, greater than the 50% limitation, not to exceed the actual costs may be used to calculate Fringe Benefit Costs to be added to the hourly wage].*

Overtime rate charged as stipulated by Requestor (overtime is not used to calculate the fringe benefit cost)

To figure the number of increments, take the number of minutes: \_\_\_\_\_, divide by 15-minute increments, and round down. Enter below:

Number of increments

x \_\_\_\_\_ =

2. Labor Cost

\$ \_\_\_\_\_

**3a. Employee Labor Cost for Separating Exempt from Non-Exempt (Redacting):**

*(Fill this out if using a County employee. If contracted, use No. 3b instead).*

The County will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

**This fee is being charged because failure to do so will result in unreasonably high costs to the County that are excessive and beyond the normal or usual amount for those services compared to the County's usual FOIA requests, because of the nature of the request in this particular instance, specifically:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

This is the cost of labor of a **County employee**, including necessary review, directly associated with separating and deleting exempt from nonexempt information. This shall not be more than the hourly wage of the **County's lowest-paid employee** capable of separating and deleting exempt from nonexempt information in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged **15-minute time increments**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.*

Hourly Wage Charged: \$ \_\_\_\_\_

Charge per ¼ hour: \$ \_\_\_\_\_

OR

Hourly Wage with Fringe Benefit Cost: \$ \_\_\_\_\_

Multiply the hourly wage by the percentage multiplier: \_\_\_\_\_%  
 (up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per ¼ hour: \$ \_\_\_\_\_

*[For records already available on the County's website that Requestor has requested in a paper or non-paper digital medium, greater than the 50% limitation, not to exceed the actual costs may be used to calculate Fringe Benefit Costs to be added to the hourly wage].*

Overtime rate charged as stipulated by Requestor (overtime is not used to calculate the fringe benefit cost)

To figure the number of increments, take the *number of minutes*: \_\_\_\_\_, divide by *15-minute increments*, and round down. Enter below:

Number of increments

3a. Labor Cost

x \_\_\_\_\_ =

\$ \_\_\_\_\_

**3b. Contracted Labor Cost for Separating Exempt from Non-Exempt (Redacting):**

*(Fill this out if using a contractor, such as the attorney. If using in-house employee, use No. 3a instead.)*

The County will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

**This fee is being charged because failure to do so will result in unreasonably high costs to the County that are excessive and beyond the normal or usual amount for those services compared to the County's usual FOIA requests, because of the nature of the request in this particular instance, specifically:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

As this County does not employ a person capable of separating exempt from non-exempt information in this particular instance, as determined by the FOIA Coordinator, this is the cost of labor of a **contractor** (i.e.: outside attorney), including necessary review, directly associated with separating and deleting exempt information from nonexempt information. This shall not exceed an amount equal to 6 times the state minimum hourly wage rate of \_\_\_\_\_ (currently \$8.15).

**Name of contracted person or firm:** \_\_\_\_\_

These costs will be estimated and charged in **15-minute time increments (must be 15-minutes or more)**; all partial time increments must be rounded down. *If the number of minutes is less than 15, there is no charge.*

**Hourly Cost Charged:** \$ \_\_\_\_\_ **Charge per increment:** \$ \_\_\_\_\_

To figure the number of increments, take the *number of minutes*: \_\_\_\_\_, divide by *15-minute increments*, and round down to: \_\_\_\_\_ increments. Enter below:

**Number of increments**  
 x \_\_\_\_\_ = **3b. Labor Cost**  
 \$ \_\_\_\_\_

**4. Copying / Duplication Cost:**

Copying costs may be charged if a copy of a public record is requested, or for the necessary copying of a record for inspection *(for example, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection).*

**No more than the actual cost of a sheet of paper, up to maximum 10 cents per sheet for:**

- **Letter** (8 1/2 x 11-inch, single and double-sided): \_\_\_\_\_ cents per sheet
- **Legal** (8 1/2 x 14-inch, single and double-sided): \_\_\_\_\_ cents per sheet

**No more than the actual cost of a sheet of paper for other paper sizes:**

- **Other paper sizes** (single and double-sided): \_\_\_\_\_ cents / dollars per sheet

**Actual and most reasonably economical cost of non-paper physical digital media:**

- **Circle applicable:** Disc / Tape / Drive / Other Digital Medium **Cost per Item:** \_\_\_\_\_

The cost of paper copies **must** be calculated as a total cost per sheet of paper. The fee **cannot exceed 10 cents per sheet** of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. The County must utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

**Number of Sheets:**  
 x \_\_\_\_\_ = \$ \_\_\_\_\_  
 x \_\_\_\_\_ = \$ \_\_\_\_\_  
 x \_\_\_\_\_ = \$ \_\_\_\_\_  
**No. of Items:**  
 x \_\_\_\_\_ = \$ \_\_\_\_\_

**4. Total Copy Cost**  
 \$ \_\_\_\_\_

**5. Mailing Cost:**

The County will charge the actual cost of mailing, if any, for sending records in a reasonably economical and justifiable manner. Delivery confirmation is not required.

- The County **may** charge for the least expensive form of postal delivery confirmation.
- The County **cannot** charge more for expedited shipping or insurance unless specifically requested by the requestor.\*

Actual Cost of Envelope or Packaging: \$ \_\_\_\_\_

Actual Cost of Postage: \$ \_\_\_\_\_ per stamp

\$ \_\_\_\_\_ per pound

\$ \_\_\_\_\_ per package

Actual Cost (least expensive) Postal Delivery Confirmation: \$ \_\_\_\_\_

\*Expedited Shipping or Insurance as Requested: \$ \_\_\_\_\_

\* Requestor has requested expedited shipping or insurance

Number of Envelopes or Packages:

x \_\_\_\_\_ = \$ \_\_\_\_\_

Costs:

5. Total Mailing Cost

\$ \_\_\_\_\_

**6. Subtotal Fees Before Waivers, Discounts or Deposits:**

Estimated Time Frame to Provide Records:

\_\_\_\_\_ (days or date)

The time frame estimate is nonbinding upon the County, but the County is providing the estimate in good faith. Providing an estimated time frame does not relieve the County from any of the other requirements of this act.

- Cost estimate  
 Bill

- 1. Labor Cost to Locate: \$ \_\_\_\_\_
- 2. Labor Cost for Copying: \$ \_\_\_\_\_
- 3a. Labor Cost to Redact: \$ \_\_\_\_\_
- 3b. Contract Labor Cost to Redact: \$ \_\_\_\_\_
- 4. Copying/Duplication Cost: \$ \_\_\_\_\_
- 5. Mailing Cost: \$ \_\_\_\_\_

**Subtotal Fees:** \$ \_\_\_\_\_

**7. Waiver: Public Interest**

A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge 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.

All fees are waived **OR**  All fees are reduced by: \_\_\_\_\_%

Subtotal Fees After Waiver: \$ \_\_\_\_\_

<p><b>8. Discount: <u>Indigence</u></b>  A public record search <b>must</b> be made and a copy of a public record <b>must</b> be furnished <b>without charge for the first \$20.00 of the fee</b> for each request by an individual who is entitled to information under this act and who:</p> <p>1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, <b>OR</b></p> <p>2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.</p> <p>If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if <b>ANY</b> of the following apply:</p> <p>(i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year, <b>OR</b></p> <p>(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.</p> <p style="text-align: right;"><input type="checkbox"/> <b>Eligible for Indigence Discount</b></p>	<p><b>Subtotal Fees After Discount</b>  (subtract \$20):</p>	<p>\$ _____</p>
<p><b>9. Discount: <u>Nonprofit Organization</u></b>  A public record search <b>must</b> be made and a copy of a public record <b>must</b> be furnished <b>without charge for the first \$20.00 of the fee</b> for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the federal Protection and Advocacy for Individuals with Mental Illness Act, if the request meets <b>ALL</b> of the following requirements:</p> <p>(i) Is made directly on behalf of the organization or its clients.</p> <p>(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1931.</p> <p>(iii) Is accompanied by documentation of its designation by the state, if requested by the County.</p> <p style="text-align: right;"><input type="checkbox"/> <b>Eligible for Nonprofit Discount</b></p>	<p><b>Subtotal Fees After Discount</b>  (subtract \$20):</p>	<p>\$ _____</p>
<p><b>10. Deposit: <u>Good Faith</u></b>  The County may require a good-faith deposit <u>before providing the public records to the Requestor</u> <b>if the entire fee estimate or charge authorized under this section exceeds \$50.00</b>, based on a good-faith calculation of the total fee. The deposit cannot exceed 1/2 of the total estimated fee. <b>Percent of Deposit:</b> _____%</p>	<p><b>Date Paid:</b>  _____</p>	<p><b>Deposit Amount Required:</b>  \$ _____</p> <p><i>(Up to 50% of Subtotal Fees from Item 6, Page 5, less any Waiver under Item 7, and less any Discounts under Item 8 or Item 9)</i></p>

**11. Deposit: Increased Deposit Due to Previous FOIA Fees Not Paid In Full**

After the County has granted and fulfilled a written request from an individual under this Act, if the County has not been paid in full the total amount of fees for the copies of public records that the County made available to the individual as a result of that written request, **the County may require an increased estimated fee deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual** if ALL of the following apply:

- (a) The final fee for the prior written request was not more than 105% of the estimated fee.
- (b) The public records made available contained the information being sought in the prior written request and are still in the County's possession.
- (c) The public records were made available to the individual, subject to payment, within the best effort estimated time frame given for the previous request.
- (d) Ninety (90) days have passed since the County notified the individual in writing that the public records were available for pickup or mailing.
- (e) The individual is unable to show proof of prior payment to the County.
- (f) The County calculates a detailed itemization, as required under MCL 15.234, that is the basis for the current written request's increased estimated fee deposit.

The County **can no longer require an increased estimated fee deposit** from an individual if ANY of the following apply:

- (a) The individual is able to show proof of prior payment in full to the County, **OR**
- (b) The County is subsequently paid in full for the applicable prior written request, **OR**
- (c) Three hundred sixty-five (365) days have passed since the individual made the written request for which full payment was not remitted to the County.

Date Paid: \_\_\_\_\_

Percent Deposit Required:

\_\_\_\_\_ %

Deposit Required:

\$ \_\_\_\_\_

*(Up to 100% of Subtotal Fees from Item 6, Page 5, less any Waiver under Item 7, and less any Discounts under Item 8 or Item 9)*

**12. Late Response Labor Costs Reduction**

If the County does not respond to a written request in a timely manner as required under MCL 15.235(2), the County **must** do the following:

- (a) **Reduce the charges for labor costs** otherwise permitted by 5% for each day the County exceeds the time permitted for a response to the request, **with a maximum 50% reduction.**

Number of Days Over Required Response Time: \_\_\_\_\_

Total Labor Costs

\$ \_\_\_\_\_

Minus Reduction

\$ \_\_\_\_\_

Multiply by 5%

= Total Percent Reduction: \_\_\_\_\_

= Reduced Total Labor Costs

\$ \_\_\_\_\_

**13. Balance Due**

*Subtotal Fees from Item 6 on page 5 reduced by:*

- (a) any Waiver under Item 7;*
- (b) any Discounts under Item 8 or Item 9;*
- (c) any Deposit amounts previously paid under Item 10 or Item 11; and*
- (d) any Cost Reduction under Item 12*

Date Paid \_\_\_\_\_

Total Balance Due:

\$ \_\_\_\_\_

**The Public Summary of the County's FOIA Procedures and Guidelines is available free of charge from:**

Website: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

**Request Will Be Processed, But Balance Must Be Paid Before Copies May Be Picked Up, Delivered or Mailed**

*(Form created by MTA, MAMA and CS&T, PC, Oct 2015)*

# **ATTACHMENT 5**

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**PUBLIC RECORDS EXEMPT FROM FOIA DISCLOSURE**

You may (*but are not required to*) withhold from public disclosure certain categories of public records under the Freedom of Information Act.

The act does not require a public body to make a compilation, summary, or report of information, **[MCL 15.233(4)]** or to create a new public record **[MCL 15.233(5)]**.

The following categories of information *may* be withheld:

- A. Specific information about an individual's private affairs, if the release of the information would constitute a clearly unwarranted invasion of the person's privacy. **[MCL 15.243(1)(a)]**
  
- B. Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following: **[MCL 15.243(1)(b)]**
  - 1. interfere with law enforcement proceedings; **[MCL 15.243(1)(b)(i)]**
  - 2. Deprive a person of the right to a fair trial or impartial administrative adjudication; **[MCL 15.243(1)(b)(ii)]**
  - 3. Constitute an unwarranted invasion of personal privacy; **[MCL 15.243(1)(b)(iii)]**
  - 4. Disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source; **[MCL 15.243(1)(b)(iv)]**
  - 5. Disclose law enforcement investigative techniques or procedures; **[MCL 15.243(1)(b)(v)]**
  - 6. Endanger the life or physical safety of law enforcement personnel. **[MCL 15.243(1)(b)(vi)]**

- C. Public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in non-disclosure. **[MCL 15.243(1)(c)]**
- D. Records or information specifically described and exempted from disclosure by statute. **[MCL 15.243(1)(d)]**
- E. A public record or information which is furnished by the public body originally compiling, preparing or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable. **[MCL 15.243(1)(e)]**
- F. Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy. **[MCL 15.243(1)(f)]**  
*(SEE STATUTE FOR CONDITIONS)*
- G. Information subject to attorney-client privilege. **[MCL 15.243(1)(g)]**
- H. Information subject to other enunciated privileges such as physician-patient and those recognized by statute or court rule. **[MCL 15.243(1)(h)]**
- I. Pending public bids to enter into contracts, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired. **[MCL 15.243(1)(i)]**
- J. Appraisals of real property to be acquired by a public body, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired. **[MCL 15.243(1)(j)]** *(SEE STATUTE FOR CONDITIONS)*
- K. Test questions and answers, scoring keys and other examination instruments. **[MCL 15.243(1)(k)]**
- L. Medical counseling or psychological facts which would reveal an individual's identity. **[MCL 15. 243(1)(l)]**

- M. Deliberative process and frank communications between or within public bodies. **[MCL 15.243(1)(m)]** (*SEE STATUTE FOR CONDITIONS*)
- N. Law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in non-disclosure. **[MCL 15.243(1)(n)]**
- O. Information which would reveal the location of archaeological sites. **[MCL 15.243(1)(o)]**
- P. Product testing data developed by agencies buying products where only one bidder meets the agency's specifications. **[MCL 15.243(1)(p)]**
- Q. A student's college academic transcript where the student is delinquent on university loans. **[MCL 15.243(1)(q)]**
- R. Records of any campaign committee including any committee that receives monies from a state campaign fund. (*These records are open to the public under Public Act 388 of 1976*) or **[MCL 15.243(1)(t)]**
- S. Public records of a law enforcement agency the release of which would do any of the following (unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance): **[MCL 15.243(1)(s)]**
  - 1. Identify an informer; **[MCL 15.243(1)(s)(i)]**
  - 2. identify a law enforcement undercover officer or agent or a plain clothes officer; **[MCL 15.243(1)(s)(ii)]**
  - 3. Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have; **[MCL 15.243(1)(s)(iii)]**
  - 4. Disclose the name, address, or telephone numbers of family members of law enforcement officers or agents; **[MCL 15.243(1)(s)(iv)]**
  - 5. Disclose operational instructions for law enforcement officers or agents; **[MCL 15.243(1)(s)(v)]**
  - 6. Reveal the contents of law enforcement officers or agents' staff manuals; **[MCL 15.243(1)(s)(vi)]**
  - 7. Endanger the life or safety of law enforcement officers or agents and their families or those who furnish information to law enforcement agencies or departments; **[MCL 15.243(1)(s)(vii)]**

8. Identify a person as a law enforcement officer, agent or informer; **[MCL 15.243(1)(s)(viii)]**
  9. Disclose personnel records of law enforcement agencies; **[MCL 15.243(1)(s)(ix)]**
  10. Identify residences that law enforcement agencies are requested to check in the absence of their owners or tenants. **[MCL 15.243(1)(s)(x)]**
- T.** Information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the Public Health Code. **[MCL 15.243(1)(t)]** *(SEE STATUTE FOR CONDITIONS)*
- U.** Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures. **[MCL 15.243(1)(y)]**
- V.** Records or information relating to a civil action to which the requesting party and the public body are both parties. **[MCL 15.243(1)(v)]**
- W.** Information that would disclose the social security number of any individual. **[MCL 15.243(1)(w)]**
- X.** An application and supporting materials that could be used to identify a candidate for the position of president of an institution of higher education established under section 4, 5 or 6 of Article VIII of the state constitution of 1963 until one or more individuals have been identified as finalists. **[MCL 15.243(1)(x)]** *(SEE STATUTE FOR CONDITIONS)*
- Y.** Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including building, public works, and public water supply, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies. **[MCL 15.243(1)(y)]**
- Z.** Records which if disclosed would violate the federal Family Educational Rights and Privacy Act of 1974 (20 USC 1232) (primarily student records). **[MCL 15.243(2)]**

# **ATTACHMENT 6**

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**FOIA - SELECTED OTHER STATUTORY EXEMPTIONS**

**Introduction**

The Michigan Freedom of Information Act provides for access to certain public records of public bodies. A public body may exempt certain information from disclosure as a public record including, *“records or information specifically described and exempted from disclosure by statute.”* [MCL 15.243(1)(d)].

The Freedom of Information Coordinator In determining what records or information may be specifically exempted by statute should review some of the following potentially applicable statutes [Note that this is a sampling only of statutory exemptions and numerous other State and federal statutes may also provide potential exemptions]:

**Michigan State Police Uniform Crime Reporting System** - Names of individuals may not be reported on the uniform crime report submitted to the department of state police; **MCL 28.251.**

**LEIN** - LEIN information may not be given to a private person for any purpose and doing so is a criminal offense under MCL 28.214, 1981 AACS, R 28.5208(4).

**Bureau of Criminal Identification and Records** - Sheriff and Police reports on accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes and juvenile offenses and crimes and juvenile offenses involving sexual conduct are confidential; **MCL 28.247.**

**Crime Victims' Rights Act** - A victim's address and telephone number maintained by a sheriff or the department of corrections is exempt from disclosure; **MCL 780.769.**

**Motor Vehicles** - The Department of State Police shall not release information relating to an accident and the record of a driver to a nongovernmental agency, unless the driver was subsequently convicted of, or determined responsible for, a violation of the act in connection with the accident; **MCL 257.733.**

**Firearms-** Firearms records are confidential; **MCL 28.421b.**

**Controlled Substance** - A nonpublic record is to be maintained by the department of state police for a person arrested and discharge/dismissal under this section. This record shall only be furnished as provided for in the statute; **MCL 333.7411(2).**

**Domestic Violence** - A nonpublic record is to be maintained for a person charged with spousal abuse if the charge is dismissed pursuant to the section; **MCL 769.4a.**

**Child Protection Law** - Any person who has reasonable cause to suspect child abuse or neglect may report the matter to the family independence agency. The reporting person's identity is confidential subject to disclosure only by consent or judicial process; **MCL 722.625.**

**Holmes Youthful Trainee Act** - all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection; **MCL 762.14(4).**

**Probate Code/Juvenile Division** - The Department of State Police shall retain a nonpublic record of an order setting aside adjudication for a juvenile and of the record of the arrest, fingerprints, adjudication and disposition of the applicant in the case to which the order applies. The nonpublic record shall be made available only to a court, a law enforcement agency, a prosecuting attorney, and a limited number of others upon request for limited purposes; **MCL 712A.18e.**

**Polygraph Results** - Any recipient of information, report or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party except as may be required by law and the rules promulgated by the board; **MCL 338.1728.**

**Mental Health Code-**

- Information in the record of a recipient and other information acquired in the course of providing mental health services to a recipient; **MCL 330.1748; MCL 330.1746.**
- The identity of an individual who makes a report of suspected abuse of recipient or resident to the law enforcement agency; **MCL 330.1723.**

- Substance use disorder services records of the diagnostic evaluation, psychiatric, psychological, social service care, and referral of an individual that are maintained in connection with the performance of an approved service program or emergency medical service;  
**MCL 330.1261; MCL 330.1285.**

**HIPAA** - Medical information officers gather as they go about their duties and investigations but not information objected by court order;  
**45 CFR 164.508, 45 CFR 164.510. 45 CFR 164.512.**

**Public Health Code –**

- Confidential information acquired from an individual consulting the licensed psychologist, social worker, licensed professional counselor or a limited licensed counselor in his or her professional capacity may not be disclosed;  
**MCL 333.18117; MCL 333.18237; MCL 333.18513.**
- Patient or resident personal and medical records of licensed health facility or agency are confidential; **MCL 333.20201.**
- All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification that are associated with the serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome are confidential;  
**MCL 333.5131.**

**Michigan Medical Marijuana** - Individual's name and other identifying information of person who has been issued registry identification cards is confidential and is exempt from disclosure under the freedom of information act; **MCL 333.26426.** A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both; MCL 333.26426(4). Caution - a person who has applied to MOCH and has an application that has been pending more than 20 days is presumed to have been issued a registry identification card.

**General Property Tax** - No personal or real property tax statements, as requested by the assessor, shall be used for any purpose other than for assessing taxes; **MCL 211.23.**

**City Income Tax Act** - Information gained by the administrator, city treasurer or any other city official, agent or employee as a result of a return, investigation, hearing or verification required or authorized by the tax ordinance; **MCL 141.674.**

**Copyrighted Material** - Copyrighted materials may not be copied and distributed in violation of the Copyright Act, 17 USCA 106, 109, Op.Atty.Gen.1979, No. 5500, p. 255. *Caveat* may not cover copyrighted materials required by law to be file with the public body. **Op.Atty.Gen.1997, No. 6965.**

**Business Incubation Act** - A community board appointed pursuant to the Business Incubation Act shall not disclose matters of a proprietary nature without the consent of the applicant submitting information; **MCL 125.1574.**

**Bidders on Public Works** - Questionnaires and sworn statements required of bidders on public work construction contracts are confidential; **MCL 123.504.**

**Open Meetings Act** - Closed session minutes maintained by the clerk of the public body "shall not be made available to the public"; **MCL 15.267.**

**Uniform Condemnation Procedures Act**- Documents and other information that a property owner provides to the agency regarding determination of just compensation in condemnation proceedings; **MCL 213.55.**

**Michigan Election Law** - Electronic mail address provided by an absent uniformed services voter or overseas voter for Election Law purposes; **MCL 68.759a.**

**The Social Welfare Act** - Records relating to categorical assistance, including medical assistance, shall be confidential; **MCL 400.35; MCL 400.64(2).**