

MUSKEGON COUNTY

MICHIGAN

FREEDOM OF
INFORMATION ACT

Policy & Procedure Guide

Adopted by: The Muskegon County
Board of Commissioners
October 26, 1999
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The Michigan Freedom of Information Act (FOIA)

requires that public bodies grant full and complete access to information regarding the affairs of their operations. This Act provides for public access to certain records; permits certain fees; prescribes the powers and duties of certain public officers; and provides remedies, penalties and repeals to certain acts and parts of acts.

The Freedom of Information Act is designed to implement a strong state policy that all records maintained by government, unless exempted, are to be made available to the public upon request.

As a public body, the County of Muskegon is required to assure that all persons (except those incarcerated in state or local correctional facilities) are entitled to full and complete information if the procedures of the Act are followed. Information covered under the FOIA include business transactions and paperwork maintained, received and generated as part of the governmental unit.

The purpose of this policy is to:

- ◆ Assure compliance with the Freedom of Information Act by all County of Muskegon Departments and Offices as required and permitted by statutes.
- ◆ Formulate a comprehensive policy that will be applicable County-wide regarding the dissemination of information pursuant to the Freedom of Information Act (MCL.14.231 et. Sec.) (Public Act 553 of 1996), as amended.
- ◆ Communicate to County Elected Officials, Department Heads, Employees, and the Public the formal County Policy on Freedom of Information requests.

I. RECEIVE THE REQUEST

1. FOIA Officer - The County Administrator is the designated FOIA Officer with authorization by the Muskegon County Board of Commissioners to accept and process requests for public records and to approve denials under this act.
2. Routine FOIA requests for departmental information may be received and processed by the proper County Departments and/or Offices. The FOIA Officer shall be notified of any extraordinary requests prior to processing.
3. All denials under this act must be authorized by the FOIA Officer.
4. Requests under the Freedom of Information Act must meet the following requirements:
 1. All FOIA requests must be submitted in writing. If you require assistance with writing or translating, please contact the FOIA Officer. Individuals can submit their requests in letter format or complete and return a Request for Information form (FOIA #010). Requests received by facsimile, electronic mail or other electronic means are considered received the first business day following the transmittal.
 2. The requested information must be identifiable. The written request should describe the public record sufficiently to enable the public body to find the public record.
 3. The requested document and/or information must exist.
 4. The requested records should NOT be exempt from disclosure under the Act as referenced in FOIA 15.243, Section 13 (see attachment).
 5. The FOIA request can be a single (one-time) request or a renewable subscription request (information disseminated on a regular basis for up to six months).
 6. Prisoners in state, county or federal correctional facilities are not entitled to make requests.
5. Requests for departmental information that is furnished to the general public through normal operations should not be treated as a FOIA request. This includes pamphlets, loose-leaf publications, and other printed materials (e.g. reports) produced for public information and disclosure. In addition, departmental guidelines, manuals and forms, adopted or used by the agency in the discharge of its functions should also be made available without a FOIA request.

II. RESPOND TO THE REQUEST

1. The County Department or Office shall **determine the scope of the FOIA request** (e.g. the time required to search for, examine, separate/delete exempt information, and/or copy the requested records).
2. The County of Muskegon will charge fees for reproducing requested records in accordance with Section 4 of the FOIA.
 - a. The County Department or Office should use the established FOIA fees as outlined in the attached fee schedule to **estimate the cost of providing the requested information**.
 - b. The first \$20 of a fee shall be waived for a person who receives public assistance or presents facts showing inability to pay because of indigency.
 - c. The FOIA Officer shall periodically review and recommend FOIA fee adjustments to the Muskegon County Board of Commissioners. Approved fees shall be communicated to all Departments and Elected Offices of the County.
3. In accordance with the Act (Reference 15.235, Section 5.2): Unless otherwise agreed to in writing by the person making the request, the County Department or Office (public body) shall **respond to the FOIA request within 5 business days** by doing one of the following:
 - a. Process and grant the request.
 - b. Issue a written notice to deny the request.
 - c. Grant the request in part and issue a written notice to deny the request in part.
 - d. Under unusual circumstances (See FOIA 15.232, Section 2.g), issue a notice to extend the response period by 10 business days.
 - e. If the cost of the request is expected to exceed \$50, issue a notice to the requestor to provide a 50% good faith deposit prior to processing the request.

III. DENIALS

4. Notices denying a FOIA request, in whole or part, shall contain a description of the denied record **and** an explanation for the grounds of the denial as follows:
 - a. If the public record is exempt from disclosure, the specific statutory citation for the exemption should be listed.
 - b. If the public record does not exist, a certification stating that the record does not exist under the name given by the requestor or by another name reasonably known to the public body should be included with the denial notice.
 - c. If a separation or deletion is made, a description of the public record or information on the public record that is separated or deleted pursuant to section 14 should be listed..
5. A written notice of denial must also be accompanied by a “Right to Appeal” statement, informing the requestor’s **right** to do either of the following:
 - a. Submit to the Chairperson of the Muskegon County Board of Commissioners a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the disclosure denial.
 - b. Seek judicial review of the denial under section 10 of the FOIA.
6. In addition, the “Right to Appeal” statement should inform the requesting party of their right to receive attorney fees and damages as provided in Section 10 of the FOIA if, after judicial review, the Circuit Court determines that the public body has not complied with this Section and orders disclosure of all or portions of the public record.
7. The Chairperson of the Board is not considered to have received written appeal until the first regularly scheduled Board meeting following submission of the written appeal.
8. The Chairperson of the Board shall, within 10 days after receiving written appeal, do one of the following:
 - a. Reverse the denial.
 - b. Issue written notice upholding the denial.
 - c. Reverse the denial in part and issue written notice upholding denial in part.
 - d. Under unusual circumstances, issue notice extending for not more than 10 business days the period during which the head of the public body shall respond to written appeal.

IV. RECORD THE REQUEST

1. Each Department or Office that processes FOIA information shall establish and maintain a **FOIA log** to track and record related details to verify the following:
 - a. Compliance with FOIA 15.233, Section 3.2 - A copy of all written FOIA requests for public records should be kept on file for no less than 1 year.
 - b. Compliance with FOIA 15.235, Section 5.2 - A public body shall respond to a request for a public record within 5 business days after its receipt.
 - c. Compliance with FOIA 15.234, Section 4.3 - Fees shall be uniform and not dependent upon the identity of the requesting person.
2. The FOIA logs should identify the County of Muskegon Department or Office in it's heading and should record (as a minimum) the following items:
 - a. Date Received
 - b. Brief Description of Request
 - c. Requesting Party
 - d. Date Responded
 - e. Response Type (granted, denied, partial, extension, deposit)
 - f. Fees Charged
 - g. Fees Collected
3. In addition to the log, the County Department or Office shall keep on file a time stamped copy of all requests and responses for a period of one (1) year following their issuance. The actual materials, information or records provided to the requestor should not be copied and filed if the documents are stored and accessible through normal operations.
4. FOIA logs, requests, responses and related information must be available for review by the FOIA Officer upon request.
5. The County of Muskegon Department or Office shall comply with the following FOIA related record retention responsibilities in accordance with 15.233, Section 3.3:
 - a. Furnish the requesting person a reasonable opportunity for inspection and examination of its public records and furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours.
 - b. Make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.
 - c. Protect public records from loss, unauthorized alteration, mutilation, or destruction.

COUNTY OF MUSKEGON

**FREEDOM OF INFORMATION ACT
FEE SCHEDULE**

Effective: March 11, 2008

NOTE: This schedule **does not apply** to public records prepared by County Departments or Offices under an act or statute specifically authorizing the sale of those public records to the public **or** to fees that have been established and approved as part of the County Department or Office's operating revenue.

<u>Type of Reproduction</u>	<u>Cost</u>	<u>Unit</u>
Copies of a Document	\$.25	per page
Additional Copies of the Same Document	\$.10	per page
Labor cost incurred in duplication, examination, review, separation, deletion, etc.	\$ 3.52 ¹	per 10 minute unit
Computer process time	\$13.10	per 10 minute unit
Postage charges	Actual	per mailing
Other costs (disks, slides, tapes, etc.)	Actual	per item

Waivers

The first \$20 of the fee shall be waived for each request of an individual who submits an "Affidavit of Indigency" stating that they are receiving public assistance or facts showing inability to pay the full cost.

A waiver of fees will **not** be provided to an indigent person requesting additional copies of identical documents previously provided with a waiver of fees pursuant to a prior request under the FOIA.

Deposits

If the fee for the search and providing the public information exceeds \$50, a deposit of ½ the estimated fee is required.

Other

Fees must be paid in full prior to the actual delivery of the public information or copies.

The County department or office can not refuse to process a subsequent FOIA request on the ground that the requestor failed to pay fees charged for a prior FOIA request.

1. Hourly wage of the lowest paid departmental employee capable of retrieving the information necessary to comply with the request. The rate listed was calculated using the hourly wage (step 1) of a Clerk II plus 90% fringes (\$11.105 + 90% = \$21.10) prorated in 10 minute units and should be adjusted if a higher salaried employee with technical or advanced skill level is needed to respond to the request. This may involve professional staff for more technical requests or legal staff to resolve issues related to exemptions under the FOIA

FREEDOM OF INFORMATION ACT

NOTICE OF RIGHT TO APPEAL

After notification of a denial of a Freedom of Information Act request, the requesting party has the right to undertake either of the following actions to appeal the decision:

1. Submit to the Chairperson of the Muskegon County Board of Commissioners a written appeal that specifically states the word “appeal” and identifies the reasons for the reversal of the disclosure denial to:

Attn: County Board Chairperson
990 Terrace Street
Muskegon, MI 49442

2. Seek judicial review under Section 10 of the FOIA.

The requesting party also has the right to receive attorney’s fees and damages as provided in Section 10 of the FOIA if, after judicial review, the Circuit Court determines that the public body has not complied with this Section and orders disclosure of all or portions of the public record.