

MUSKEGON COUNTY

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MICHIGAN

FREEDOM OF  
INFORMATION ACT

Policy No. 1999-551

Policy & Procedure Guide

Adopted by: The Muskegon County

Board of Commissioners

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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 includes 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. seq.) (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, or his/her designee, 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. The FOIA Officer may, in his/ her discretion, implement administrative rules, consistent with State law and this Policy & Procedure Guide to administer the acceptance and processing of FOIA requests.
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. (Extraordinary examples: a large volume of material, information requested covers many years, and may require considerable staff/computer time, etc.). Requests for departmental information that is furnished to the general public through normal operations should not be treated as a FOIA request. This includes information readily available on the county and/or department website, 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.
3. All denials under this act must be authorized by the FOIA Officer and must cite the reason for denial.
4. Requests under the Freedom of Information Act must meet the following requirements:
  - a. FOIA requests may 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) attached and also available on the County Board of Commissioners' website at <http://mi-muskegoncounty.civicplus.com/1115/Freedom-of-Information-Act> and email to [FOIA@muskegoncounty.net](mailto:FOIA@muskegoncounty.net)
  - b. Requests received by facsimile, electronic mail or other electronic means are considered received the first business day following the transmittal.
  - c. Verbal requests for records may be documented by the County on the County's FOIA Request Form. 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, the requesting person shall be informed of the pertinent website address.
  - d. 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.

- e. The requested document and/or information must exist.
  - f. The requested records should NOT be exempt from disclosure under the Act.
  - g. 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).
  - h. Prisoners in state, county or federal correctional facilities are not entitled to make requests.
- 5. All requests received from attorneys will be forwarded to Corporate Counsel for information, and if deemed necessary, for action.
  - 6. The FOIA Officer or his/her designee shall review County spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Officer shall work with County Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect County systems from computer attacks which may be imbedded in an electronic FOIA request.
  - 7. The County will make this Policy & Procedure 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 Policy & Procedure 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 the County's offices.
  - 8. 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.

## **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 may charge fees for reproducing requested records in accordance with Section 4 of the FOIA. 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.

- a. 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 (Attorney General Opinion 7083 of 2001) compared to the costs of the County’s usual FOIA requests, not compared to the County’s operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011). The following factors will be used to determine an unreasonably high cost to the County:
  - i. Volume of the public record requested.
  - ii. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
  - iii. Whether the public records are from more than one County department or whether various County offices are necessary to respond to the request.
  - iv. The available staffing to respond to the request.
  - v. Any other similar factors identified by the FOIA Officer in responding to the particular request.
- b. The County may charge for the following costs associated with processing a request:
  - i. 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.
  - ii. 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.
  - iii. 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.
  - iv. 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.

- v. 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.
  - vi. The cost to mail or send a public record to a requestor.
- c. Labor costs will be calculated based on the following requirements:
- i. 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.
  - ii. 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.
  - iii. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
  - iv. 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.
  - v. 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.
  - vi. Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).
- d. The cost to provide records on non-paper physical media when so requested will be based on the following requirements:
- i. 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.
  - ii. 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.

- iv. 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.
- e. The cost to provide paper copies of records will be based on the following requirements:
  - i. 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.
  - ii. The County will provide records using double-sided printing, if it is cost-saving and available.
- f. The cost to mail records to a requestor will be based on the following requirements:
  - i. The actual cost to mail public records using a reasonably economical and justified means.
  - ii. The County may charge for the least expensive form of postal delivery confirmation.
  - iii. No cost will be made for expedited shipping or insurance unless specified by the requestor.
- g. The first \$20.00 of a fee shall be discounted for a person who submits an affidavit stating that he or she is:
  - i. Indigent and receiving specific public assistance, or
  - ii. If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

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

- h. The FOIA Officer 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:

- 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.
- i. 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**. 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.
  - j. If the request is granted, or granted in part, the FOIA Officer 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.
  - k. 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.
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** on the FOIA Policy Response Form #011 (attached and available on the Board's intranet page), 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.

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.



- 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. In making the request for a good-faith deposit, the FOIA Officer 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.
  
- f. 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 Officer 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:
  - i. The final fee for the prior written request is not more than 105% of the estimated fee;
  
  - ii. The public records made available contained the information sought in the prior written request and remain in the County's possession;
  
  - iii. The public records were made available to the individual, subject to payment, within the time frame estimated by the County to provide the records;
  
  - iv. Ninety (90) days have passed since the FOIA Officer notified the individual in writing that the public records were available for pickup or mailing;
  
  - v. The individual is unable to show proof of prior payment to the County; and
  
  - vi. The FOIA Officer has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
  
- h. The FOIA Officer will not require an increased estimated fee deposit if any of the following apply:
  - i. The person making the request is able to show proof of prior payment in full to the County;

- ii. The County is subsequently paid in full for the applicable prior written request; or
  - iii. 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. A copy of this Policy & Procedure Guide 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: <http://www.co.muskegon.mi.us/boardofcommissioners/policies.htm>, a link to the Policy & Procedure Guide and the Written Public Summary will be provided in lieu of providing paper copies of those documents.
5. If the request is denied or denied in part, the FOIA Officer will issue a Notice of Denial which shall provide in the applicable circumstance:
  - a. An explanation as to why a requested public record is exempt from disclosure; or
  - b. A certification 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
  - c. An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
  - d. 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 Muskegon County Circuit Court; and
  - e. An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court; and
  - f. The Notice of Denial shall be signed by the FOIA Officer.
6. The FOIA Officer shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.
7. The County shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Officer 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.

### **III. 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 its 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 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.

#### **IV. APPEAL**

1. 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 Chairperson.
  - a. 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.
  - b. 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.
  - c. Within 10 business days of receiving the appeal the County Board of Commissioners will respond in writing by:
    - i. Reversing the disclosure denial; or
    - ii. Upholding the disclosure denial; or
    - iii. Reverse the disclosure denial in part and uphold the disclosure denial in part; or
    - iv. 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.
  - d. 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 Muskegon County Circuit Court.
  - e. Whether or not a requestor submitted an appeal of a denial to the County Board, he or she may file a civil action in Muskegon 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.

- i. Failure to comply with an order of the court may be punished as contempt of court.
  - ii. 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.
  - iii. 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.
2. 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 Chairperson.
  - a. 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.
  - b. 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.
  - c. Within 10 business days after receiving the appeal, the County Board of Commissioners will respond in writing by:
    - i. Waiving the fee;
    - ii. Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
    - iii. Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or

- iv. 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.
- d. 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 Policy & Procedures Guide and Section 4 of the FOIA.
- e. Within 45 days after receiving notice of the County Board's determination of an appeal, the requesting person may commence a civil action in Muskegon 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.
- f. An action shall not be filed in Circuit Court unless one of the following applies:
  - i. The County does not provide for appeals of fees, or
  - ii. The County Board of Commissioners failed to respond to a written appeal as required, or
  - iii. The County Board of Commissioners issued a determination to a written appeal.
- g. If a court determines that the County required a fee that exceeds the amount permitted under its publicly available Policy & Procedures Guide or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount.
  - i. Failure to comply with an order of the court may be punished as contempt of court.
  - ii. 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.

- iv. 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.

V. CONFLICT WITH PRIOR FOIA POLICIES AND PROCEDURES; EFFECTIVE DATE

1. To the extent that this Policy & Procedure Guide conflicts with previous FOIA policies promulgated by County Board of Commissioners or the County Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Officer 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 Officer is controlling.
2. To the extent that any provision of this Policy & Procedure Guide or any administrative rule promulgated by the FOIA Officer pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Officer 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 Officer shall inform the County Board of Commissioners of any change to these Policies and Guidelines.
3. This FOIA Policy & Procedure Guide becomes effective July 1, 2015.

## Muskegon County

### Public Summary of FOIA Policy and Procedure Guide

**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:  
[www.co.muskegon.mi.us/boardofcommissioners/policies.htm](http://www.co.muskegon.mi.us/boardofcommissioners/policies.htm).

#### **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.), or by verbal request.
  - Any verbal request will be documented by the County on the County's FOIA Request Form.
- Written requests may be delivered to the Muskegon County Hall of Justice in person or by mail to FOIA Officer, County of Muskegon, 990 Terrace St., 4<sup>th</sup> Floor, Muskegon, MI 49442; email to [FOIA@muskegoncounty.net](mailto:FOIA@muskegoncounty.net) or may be faxed to (231) 724-6673. To ensure a prompt response, requests should contain the term "FOIA" or "FOIA Request" on the first/cover page/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 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 Officer 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 (a sworn statement) 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.

## 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 Supervisor (or “clerk” or “FOIA Coordinator,” etc.).

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:

<http://mi-muskegoncounty.civicplus.com/1115/Freedom-of-Information-Act> and email to [FOIA@muskegoncounty.net](mailto:FOIA@muskegoncounty.net)

The County Board is not considered to have received a written appeal until the first regularly scheduled County Board meeting following submission of the written appeal. Within 10 business days of receiving the appeal the County Board 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, you may file a civil action in Muskegon 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 Administrator..

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 Muskegon County Hall of Justice and on the County's website:

<http://mi-muskegoncounty.civicplus.com/1115/Freedom-of-Information-Act> and email to [FOIA@muskegoncounty.net](mailto:FOIA@muskegoncounty.net)

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

Within 45 days after receiving notice of the County Board of Commissioners' determination of the processing fee appeal, you may commence a civil action in Muskegon 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, the court may also award you punitive damages in the amount of \$500.