

**GENESEE COUNTY  
FREEDOM OF INFORMATION ACT  
POLICY & PROCEDURES**

**I. GENERAL**

**A. Policy and Principles**

- (1) It is the policy of Genesee County and Genesee County departments (the "County"), consistent with the Michigan Freedom of Information Act ("FOIA"), that all eligible persons 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 employees.
- (2) This Policy and the procedures contained herein (the "Policy") have been adopted to comply with State law and insure that the County responds to FOIA requests in a consistent, fair, and objective manner.
- (3) The County acknowledges that it has a legal obligation to disclose all non-exempt public records in its possession pursuant to a valid written FOIA request. The County further acknowledges that it is sometimes necessary to invoke the exemptions identified under the FOIA and other applicable law in order to ensure the effective operation of government and to protect the privacy of individuals or other entities.
- (4) The County will protect the public's interest in disclosure while balancing the requirement to withhold or redact portions of records due to privacy interests, safety concerns, or other interests as described in the permissible exemptions.

**II. GENERAL ADMINISTRATION**

**A. FOIA Coordinator**

Pursuant to MCL 15.236(1), the chairperson of the Board of County Commissioners ("County Board") is the FOIA Coordinator for the County. He or she may, pursuant to MCL 15.236(3), designate another individual to act on his or her behalf in accepting and processing requests for public records received by the County and approving all denials under the FOIA. The Chairperson's name and email address, as well as his designee's name and email address if the Chairperson so designates, shall be listed on the County website as the individual to whom FOIA requests should be directed.

**B. FOIA Requests**

- (1) All FOIA requests shall be submitted in writing and directed to the County Board Chairperson or his or her designee. The request must sufficiently describe a public record so as to enable County personnel to identify and find the requested public record. No specific form to submit a request for a public record is required. The County Board, however, has approved and made available a FOIA Request Form

for use by the public (FOIA Request Form).

- (2) Written requests for public records may be submitted to the County in person, by mail, by electronic mail, or by facsimile directed to the County Board Chairperson or his or her designee. Requests addressed to the County that are received by County personnel shall be promptly forwarded to the FOIA Coordinator for processing.
- (3) If a request for a public record is sent by facsimile or e-mail, the request is deemed to have been received on the following business day. MCL 15.235(1). If a request is sent by e-mail and delivered to a spam or junk-mail folder, the request is not deemed received until 1 day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.
- (4) A person may request that public records be provided on non-paper physical media, electronically mailed, or other otherwise provided to him or her 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.
- (5) If a person makes a verbal request for information believed to be available on the County's website, the public employee receiving the request shall, where practicable and to the best of the public employee's knowledge, inform the requestor about the pertinent website address.
- (6) 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 1 year.

### **III. PROCESSING A FOIA REQUEST**

#### **A. Responding to a FOIA Request**

- (1) Within 5 business days of receipt of a FOIA request the County will issue a response, unless otherwise agreed to in writing by the person making the request. The County will respond to the request in one of the following ways:
  - a. Grant the request;
  - b. Issue a written notice denying the request;
  - c. Grant the request in part and issue a written notice denying in part the request;
  - d. Issue a notice indicating the County needs an additional 10 business days to respond due to the nature of the request; or
  - e. Issue a written notice indicating that the public record requested is available at no charge on the County's website.
- (2) 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 (FOIA Response and Fee Summary Form). 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.

- (3) If the estimated cost of processing a FOIA request is expected to exceed \$50, or if the requester has not fully paid for a previously granted request, the County will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requester 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 requester upon receipt of the required deposit (FOIA Response Fee Estimate Form). This 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.
- (4) 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 business operations of County departments.
- (5) The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record to the person requesting the public record.
- (6) A webpage link to a copy of this Policy shall be provided with the response to all written requests for public records.

## **B. Denial of a FOIA Request**

- (1) If the request is denied in whole or in part, the FOIA Coordinator will issue a Notice of Denial which shall provide, as applicable:
  - a. An explanation why a requested public record is exempt from disclosure; or
  - b. A certificate that the requested record does not exist under the name or description provided by the requester, 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 Chairperson or seek judicial review in the Genesee County Circuit Court; and
  - e. An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of up to \$1,000, should the requester prevail in Circuit Court.
  - f. The Notice of Denial shall be signed by the FOIA Coordinator.

- (2) 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 provided under the FOIA.

#### **IV. FEES**

##### **A. Generally**

- (1) A fee will not be charged for the 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.
- (2) The following factors shall be used to determine an unreasonably high cost to the County:
- a. Volume of the public record or records requested.
  - b. Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
  - c. The available staffing to respond to the request.
  - d. The particular request incurs costs greater than incurred from the typical or usual request received by the County.
  - e. Any other similar factors identified by the FOIA Coordinator in responding to the particular request.
- (3) The County may charge for the following costs associated with processing a FOIA request:
- a. Labor costs directly associated with searching for, locating and examining a requested public record;
  - b. Labor costs associated with a review of a record to separate and delete information exempt from disclosure;
  - c. The actual cost of computer discs, computer tapes or other digital or similar media;
  - d. The cost of duplication of publication, not including labor, of paper copies of public records;
  - e. The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means; and
  - f. The actual cost of mailing or sending a public record.
- (4) The fee schedule provided for by the FOIA does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public

record is otherwise specifically provided by an act or statute. MCL 15.234(10). Fees provided for by other statutes include records of the Treasurer, the Register of Deeds, the Clerk's Office, and records covered by the Enhanced Access to Records Act.

## **B. Calculation**

(1) Labor costs will be calculated based on the following requirements:

- a. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- b. The cost of labor directly associated with duplication, publication, or transferring records to non-paper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down. The County will charge these costs in 6 minute increments.
- c. 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.
- d. If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of the person or firm who does the work, and the labor cost may not exceed an amount 6 times the state minimum hourly wage.
- e. Labor costs will also include a charge to cover the cost of fringe benefits. The County includes in the applicable labor charge the actual cost of fringe benefits to the extent that this cost does not exceed 50% of the labor charge.

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

- a. 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.
- b. 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.

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

- a. 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.
- b. The County may provide records using double-sided printing, if available and cost effective.

(4) The cost to mail records to a requester will be based on the following requirements:

- a. The actual cost to mail public records using a reasonably economical and justified means.
- b. The County shall charge for the least expensive form of postal delivery

confirmation.

(5) If the FOIA Coordinator does not respond to a written request in a timely manner, the following fee reductions shall be applied:

- a. Labor costs will be reduced the 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:
  - i. The late response was willful and intentional.
  - ii. The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment, conveyed a request for a public record.
  - iii. 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 e-mail, letter, or facsimile cover page.
- b. The charge reduction will be noted in the Fee Summary Form.

### **C. Fee Deposits**

- (1) If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the FOIA Coordinator, the requester will be asked to provide a deposit not exceeding one-half of the total estimated fee.
- (2) If a request for public records is from a person who previously has not fully paid the County for copies of public records made in fulfillment of a 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:
  - a. The final fee for the prior written request is not more than 105% of the estimated fee;
  - b. The public records made available contained the information sought in the prior written request and remain in the County's possession;
  - c. The public records were made available to the individual, subject to payment, within the time frame estimated by the County to provide the records;
  - d. 90 days have passed since the FOIA Coordinator 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; and
  - f. The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
- (3) The FOIA Coordinator will not require an estimated 100% fee deposit if any of the following apply:

- a. The person making the request is able to show proof of prior payment in full to the County;
- b. The County is subsequently paid in full for the applicable prior written request; or
- c. 365 days have passed since the person made the request for which full payment was not remitted to the County.

#### **D. Waiver of Fees**

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request under the following circumstances:

(1) If the person requesting a public record submits an affidavit stating that they are:

- a. indigent and receiving specific public assistance; or
- b. if not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

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

The discount, if the requestor is eligible, shall be fully noted on the Fee Summary Form that will accompany the response. If the requestor is ineligible for the discount, the specific reason for the ineligibility shall be included in the response.

(2) A nonprofit organization designated by the State to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, or their successors, if the request meets all of the following requirements:

- a. Is made directly on behalf of the organization or its clients;
- b. Is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code, 1974 PA 258 [MCL § 330.1931]; and
- c. Is accompanied by documentation of its designation by the State.

#### **V. APPEALS**

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

(1) When a requester 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 file an appeal of the denial to the County Board. The appeal must be in writing, must specifically state the word "appeal," and must identify the reason or reasons the

requester is seeking a reversal of the denial.

- (2) The County Board is not considered to have received a written appeal of either a denial or a fee amount until its first regularly scheduled meeting following the submission of the appeal.
- (3) Within 10 business days of receiving the appeal the County Board will respond in writing in one of the following ways:
  - a. Reverse the disclosure denial;
  - b. Uphold the disclosure denial;
  - c. Reverse the disclosure denial in part and uphold the disclosure denial in part; or
  - d. Under unusual circumstances, issue a notice of extension for not more than 10 business days to respond to the appeal.
- (4) Regardless of whether a requester submitted an appeal of a denial to the Board, he or she may file a civil action in Genesee County Circuit Court within 180 days after the County's final determination to deny the request.

#### **B. Appeal of an Excessive FOIA Processing Fee**

- (1) If a requester believes that the fee charged by the County to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the County Board. The appeal must be in writing, must specifically state the word "appeal," and must identify how the required fee exceeds the amount permitted.
- (2) Within 10 business days after receiving the appeal, the County Board will respond in writing by:
  - a. waiving the fee;
  - b. reducing the fee with a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the County Board that the statements in the determination are accurate and the reduced fee amount complies with this Policy and Section 4 of the FOIA;
  - c. upholding the fee with a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the County Board that the statements in the determination are accurate and the fee amount complies with this Policy and Section 4 of the FOIA; or
  - d. 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.
- (3) Within 45 days after receiving notice of the County Board's determination of a fee appeal, a requester may commence a civil action in Genesee County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the County is not obligated to process the request for the public record until the Court



resolves the fee dispute.

## **VI. MISCELLANEOUS**

### **A. Conflicts**

- (1) To the extent that this Policy conflicts with previous FOIA policies promulgated by the County Board, this Policy shall supersede all prior policies and shall control.
- (2) To the extent that any provision of this Policy 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.

### **B. Effective Date**

This Policy shall take effect as of July 1, 2015.

Adopted: June 15, 2015, Resolution no. 15-\_\_\_\_\_