

## Charter Township of Coloma

### Freedom of Information Act Procedures and Guidelines

#### Preamble: Statement of Principles

It is the policy of the Charter Township of Coloma that all persons<sup>i</sup>, consistent with the Michigan Freedom of Information Act (FOIA), 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. The people shall be informed so that they fully participate in the democratic process.

The Charter Township of Coloma's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Charter Township of Coloma acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Charter Township of Coloma acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The Charter Township of Coloma will make every effort to protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Charter Township of Coloma's policy is to disclose public records consistent with, and in compliance with, State law.

#### Section 1: General Policies

The Township Board, acting pursuant to the authority of MCL 15.236, designates the Township Clerk as the FOIA Coordinator. He or she is authorized to designate other Township staff to act on his or her behalf to accept and process written requests for the Township's public records and approve denials.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a Township spam or junk-mail folder, the request is not deemed received until one calendar day after the FOIA Coordinator, or his or her designee, first becomes aware of the request. The FOIA Coordinator, or his or her designee, shall note in the FOIA log 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.

The FOIA Coordinator, or his or her designee, shall review Township spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator, or his or her designee, shall work with Township Information Technology staff to develop administrative policies for the handling of spam and junk mail so as to protect the Township's systems from computer attacks that may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The Township 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 Township 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, or his or her designee, shall keep a copy of all written requests for public records received by the Township on file for a period of at least one year.

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

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Charter Township of Coloma must do so in writing. The request must sufficiently describe a public record so as to enable Township personnel to identify and find the requested 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.

Written requests for public records may be submitted in person or by mail to the Township Hall. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator, or his or her designee, for processing.

A person may request that public records be provided on nonpaper physical media, electronically mailed or otherwise provided to him or her in lieu of paper copies. The Township will comply with the request only if it possesses the necessary technological capability to provide records in the requested nonpaper physical media format.

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

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, within 5 business days of receipt of a FOIA request the Township will issue a response. If a request is received by facsimile, e-mail

or other electronic transmission, the request is deemed to have been received on the following business day. The Township will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request with an explanation.
- Grant the request in part and deny the request in part with a written explanation for the partial denial.
- Issue a notice indicating that due to the nature of the request the Township needs an additional 10 business days to respond.
- Issue a written notice indicating that the public record requested is available at no charge on the Township's website.

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees, if applicable, 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 the Public Summary of FOIA Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records. However, if these Procedures and Guidelines and the Public Summary are maintained on the Township's website, then a website link to those documents may be provided in lieu of providing paper copies.

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, based on a good faith calculation by the Township, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the Township 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 requestor with a detailed itemization of the allowable costs estimated to be incurred by the Township to process the request and also provide a best efforts estimate of a time frame it will take the Township to provide the records to the requestor. The best efforts estimate shall be nonbinding on the Township, 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.

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 Township; 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 office of the Township Supervisor or seek judicial review in the Berrien 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 or his or her designee.

If a request does not sufficiently describe a public record, the FOIA Coordinator or designee 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.

The Township 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 Township records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Township operations.

The FOIA Coordinator or his or her designee 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 by the Township, 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 fully paid the Township 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 Township's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the Township to provide the records;
- 90 days have passed since the Township 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 Township; and the Township has calculated an estimated detailed itemization that is the basis for the current written request's increased 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 Township;
- the Township is subsequently paid in full for all applicable prior written requests
- 365 days have passed since the person made the request for which full payment was not remitted to the Township.

## Section 5: Calculation of Fees

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 Township because of the nature of the request in the particular instance, and the Township specifically identifies the nature of the unreasonably high costs. As such, it is the policy of the Township to not charge for FOIA requests with a total estimated cost of less than \$50.

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

- The particular request incurs costs greater than incurred from the typical or usual request received by the Township. See *Bloch v Davison Community Schools*, 2011 Mich App Lexis 771, 2011 WL 1564645
- 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 public records from more than one Township department or various Township 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 Township may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication or publication, not including labor, of paper copies of public records.
- 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.
- The actual cost of mailing or sending a public record, including the least expensive form of delivery confirmation.

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<sup>ii</sup>.
- Labor costs will be charged at the hourly wage of the lowest-paid Township employee capable of doing the work, regardless of who actually performs work<sup>iii</sup>.

- Labor costs will also include a charge to cover, or partially cover, the cost of fringe benefits. The Township 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 stipulated in writing by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

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 Township has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the Township's technological infrastructure, the Township will procure any requested non-paper media and will not accept non-paper media from the requestor.

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

- The cost of paper copies of public records made on standard (8 ½ x 11) or legal (8 ½ x 14) sized paper will be assessed at actual cost not exceed \$.10 per sheet of paper. Copies for other sized paper will reflect the actual cost of reproduction.
- The Township shall provide records using double-sided printing and copying if available, cost-saving, and effective.

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 Township may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless stipulated in writing by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the Township exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
  - The late response was willful and intentional.
  - 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 information.
  - 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.

- Fully note the charge reduction in the Detailed Itemization of Costs Form Fee Waiver and Reduction section.

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 such can be considered as primarily benefitting the general public.

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit<sup>iv</sup> 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 indigency.

An individual is not eligible to receive the waiver if:

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

The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

A nonprofit organization 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, 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, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

### **Section 7: 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 file an appeal of the denial with the Office of the Township Supervisor.<sup>vi</sup>

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.

Within 10 business days of receiving the appeal the Township Supervisor 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.

Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Township Supervisor may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.

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

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the Township arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the amount of \$1,000. The Court shall also order that the public body pay a civil fine of \$1,000 to the general fund of the State treasury.

#### **Section 8: Appeal of an Excessive FOIA Processing Fee<sup>vii</sup>**

If a requestor believes that the fee charged by the Township 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 Office of the Township Supervisor. The appeal must be in writing, specifically state the word "appeal", and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Township Supervisor will respond in writing by:

- waive the fee;
- reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Township Supervisor that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Township Supervisor that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Township Supervisor will respond to the written appeal.

Within 45 days after receiving notice of the Township Supervisor's determination of a fee appeal, a requestor may commence a civil action in Berrien County Circuit Court for a fee reduction. If a civil



action is filed appealing the fee, the Township is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the Township required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or an appropriate amount of reasonable attorneys' fees, costs, and disbursements.

If the court determines that Township has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.

### **Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date**

The extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by Township Board these 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 Township Board, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these 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 Township Board, 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 Township Board of any change these Policies and Guidelines.

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

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<sup>i</sup> If you are serving a sentence of imprisonment in a local, state, or federal correctional facility you are not entitled to submit a request for a public record.

<sup>ii</sup> The cost of labor directly associated with duplication, publication, or transferring records to nonpaper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down.

<sup>iii</sup> 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 person or firm who does the work and the total labor cost may not exceed an amount 6 times the state minimum hourly wage.

<sup>iv</sup> An affidavit is a written and sworn statement.

<sup>v</sup> The FOIA states that an indigent requestor is entitled to at least two discounted fees in a calendar year; however a public body may permit more than two if it so chooses to do so.

<sup>vi</sup> If the head of the public body is a board or commission, it 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. It then has 10 business days to respond to the appeal.

<sup>vii</sup> A public body does not have to provide for administrative fee appeals; if such is the case, the fee appeal is made directly to circuit court within 45 days of receiving notice of the required fee.