

COUNTY OF MONTCALM

FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES AND GUIDELINES

This policy was established pursuant to Resolution No.2015-10, adopted by the Board of Commissioners of Montcalm County on June 22, 2015. The policy identifies the procedures that County officers and employees are to follow when processing a request in accordance with Act No. 442 of the Public Acts of 1976, as amended (the "Act").

SECTION 1.

DEFINITIONS

- Act: The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.
- FOIA Coordinator: The individual, designated by the County Board of Commissioners, who is responsible for accepting and processing requests for public records as outlined in this policy and the Act, and who is responsible for approving denials of requests, or that individual's designee as provided.
- Person: An individual, corporation, organization, or other legal entity, as modified by the Act.
- Public Body: The County of Montcalm and its duly constituted departments, commissions, boards, or committees.
- Public Record: A writing which is prepared, owned, used, in the possession of or retained by a public body in the performance of an official function from the time it is created and as otherwise defined by the Act.

Where not otherwise defined, the words and phrases contained in this policy shall have the meaning given to them, if any, by the Act.

SECTION 2.

RIGHT TO RECORDS

A person has the right to submit a written request for public record(s) from the County and its departments. The request must sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.

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 County spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator 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.

A person has the right to inspect a public record, unless exempted by law or court order. Original public records are not to be released from the County offices where the public records are secured. A person may request that copies of a public record be provided subject to the payment of fees outlined in Section 4.

A person has the right to subscribe to future issuance's of regularly published public records as outlined in Section 3 of the Act for a period of six months or less, which request may be renewed.

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

Upon request, a person will be provided with a reasonable opportunity to examine the public records provided by the public body. Persons with special needs should contact the FOIA Coordinator to insure that arrangements for special needs or reasonable facilities are prepared.

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. RIGHTS AND OBLIGATIONS OF THE PUBLIC BODY

The FOIA Coordinator shall provide reasonable facilities and opportunities for person(s) to inspect public records. To implement this Section, the FOIA Coordinator may prepare and submit to the County Board of Commissioners, for its approval, rules to regulate the time and manner which records are reviewed, to protect the records and to prevent excessive interference with the public body's normal operations.

The FOIA Coordinator shall provide a certified copy of a public record if a person requests the same in writing.

Neither the public body nor the FOIA Coordinator are obligated to create a record, list, compilation, or summary of information which does not already exist. This exemption includes analyzing, compiling, or summarizing existing information into a new format. Neither the public body nor the FOIA Coordinator are obligated to provide answers to oral or written questions.

The FOIA Coordinator shall provide copies of any public records as provided for in the Act and shall retain a copy of all written requests on file for a period of not less than one (1) year. The FOIA Coordinator will follow the provisions of Section 4 of this policy.

SECTION 4. PROVISIONS FOR COPYING PUBLIC RECORDS

All FOIA requests submitted pursuant to the Act shall be subject to fees and charges as provided for in the Act. Postage and handling shall also be charged as applicable and shall include the exact postage, as well as the cost for envelopes or other containers used for mailing copies of the public records requested. The County will charge fees, as appropriate, if it provides paper copies of records. The fees will be assessed as follows:

- Copies of public records on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper will not exceed 10 cents per sheet of paper;
- Copies for non-standard sized sheets of paper will be charged at the actual costs of reproduction;
- If available and would result in cost savings, the County may provide records using double-sided printing.

The FOIA Coordinator may also charge a fee for labor involved with searching for, examining, and reviewing a public record as permitted by the Act. In determining whether to charge a fee for labor, the FOIA Coordinator shall consider the anticipated cost to the County, the need for a devoted staff member to adequately respond to the particular request, and similar factors. Charges for labor costs shall be determined by the using the wages of the lowest paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

In the event that the County uses a contractor or outside labor to separate and redact exempt material from non-exempt material, it will identify the name of the person or firm who does this work. In such circumstances, the total labor cost charged will not exceed an amount six (6) times the minimum hourly wage in the State of Michigan. All labor costs may also include a charge to cover or partially cover the cost of fringe benefits. To cover this cost, the County may add up to 50 percent of the applicable labor charge amount to cover or partially cover the cost of fringe benefits, however, this amount shall not exceed the actual cost of fringe benefits. Overtime wages will not be included in labor costs unless agreed to by the requesting party. Overtime costs will not be used to calculate fringe benefit costs in any circumstances.

The County of Montcalm has limited in-house capabilities for copying photographs, audio or videotapes, microfilms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site, the FOIA Coordinator will determine and assess those costs. If an employee of the public body is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at County rates) will also be applied to the charges to the person(s) requesting the public records.

Copy fees and mailing charges for future issuances of regularly published records will be arranged through the FOIA Coordinator. A person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record for a period of time, not to exceed six months, unless extended. The FOIA Coordinator must sign the request form to confirm that the public record is one that is regularly published. There will be no labor charges since this must be a public record that is routinely developed.

SECTION 5.

FEE WAIVER

The County has the option to waive or reduce a fee in its sole discretion if it determines that waiving or reducing a fee is in the public interest.

Additionally, the County will waive the first \$20 of the processing fee if the person requesting a public record is indigent. To prove that the requester is indigent, he/she must present an affidavit stating that he/she is indigent and receiving specific public assistance, or, if he/she is not receiving public assistance, setting forth the facts demonstrating an inability to pay because of indigency. However, a requester is not entitled to receive this waiver if the requester has previously received discounted copies of public records two or more times during the calendar year or makes the request on behalf of other persons who are offering to or providing payment to the person for making the request.

The County also will waive the first \$20 of the processing fee for a non-profit organization designated by the state as carrying out activities under Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act 200 and the Protection and Advocacy for Individuals With Mental Illness Act. The fee waiver will only be implemented, however, if the request is made directly on behalf of such an organization or clients, is made solely for a reason

consistent with the mission and provisions of Section 931 of the Mental Health Code, and the request is accompanied by documentation that the requesting organization is so designated by the State of Michigan.

SECTION 6.

FEE DEPOSITS

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

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

- the final fee for the prior written request is not more than 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in the County's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the County to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the County; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit. The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:
 - the person making the request is able to show proof of prior payment in full to the County;
 - the County is subsequently paid in full for the applicable prior written request; or
 - 365 days have passed since the person made the request for which full payment was not remitted to the County.

SECTION 7.

PROCEDURES OF THE PUBLIC BODY IN PROCESSING A FOIA REQUEST

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the County 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 County will respond to the request in one of the following ways:

1) Grant the request.

If the request indicates that the person desires to inspect the public records, the FOIA Coordinator will contact the person to arrange for inspection at a reasonable time.

2) Issue a written notice denying the request. The notice of denial shall include:

- an explanation as to why the requested public record is exempt from disclosure in accordance with the Act, or
- an explanation that the requested record does not exist under the name given by the person or another name reasonably known to the public body, or

- an explanation or general description of information which had to be separated or deleted from the public record pursuant to Section 6 of this Policy.

In addition to the explanations noted above, the denial shall also include an explanation of the person's right to appeal the denial to the County Board of Commissioners and/or seek judicial review in accordance with the Act.

- 3) Grant the request in part, and issue a written notice denying the request in part. In the latter instance, the public records exempted from disclosure should be treated as in (2) above.
- 4) Issue a written notice extending the time in which to respond to the request by ten (10) business days.
- 5) Issue a written notice indicating that the public record requested is available at no charge on the County's website.

Where a written request is received which does not sufficiently describe the public records requested so as to enable the FOIA Coordinator to locate the same, the FOIA Coordinator may send notice to the person requesting a clarification of the request. Such notice, if sent, shall not be interpreted as a denial of the request for purposes of the Act or this policy.

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the County'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 County, 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 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 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 2 of the FOIA.

SECTION 8.

PROCEDURES FOR SEPARATION OF RECORDS

If a request is made for an existing public record that includes information which is exempt from disclosure under the Act and information which is not exempt, the FOIA Coordinator must separate the material and make the nonexempt material available for examination and/or copying. Additionally, the FOIA Coordinator is directed to generally describe the material which had to be separated, unless doing so would reveal the contents of the exempt information

and thus defeat the purpose of the exemption. The labor cost associated with such procedures shall be treated in accordance with Section 4.

SECTION 9.

DESIGNATION OF FOIA COORDINATOR

Designation: The County Controller/Administrator is hereby designated to be the County's FOIA Coordinator and as FOIA Coordinator may designate other individuals to act on his/her behalf, and may amend such designations at his/her discretion. The FOIA Coordinator and designees shall be responsible to accept and process requests for public records and approve denials in accordance with Sections 5(4) and (5) of the Act.

Appointment: The County Controller/Administrator appoints the following Montcalm County officers, officials or employees who shall be trained to serve as Departmental FOIA Coordinators:

- Sheriff
- Prosecuting Attorney
- County Clerk
- County Treasurer
- Register of Deeds
- Drain Commissioner
- EMS Director
- COA Director
- Building Official
- Animal Control Director

SECTION 10.

APPEALS

In accordance with the Act, where a person's request for a public record is denied, in whole or in part, the person shall be entitled to file a written appeal of the decision in accordance with the following process:

- 1) The person shall be advised by the FOIA Coordinator of the right to file a written appeal to the County Board of Commissioners and/or a civil action in the Montcalm County Circuit Court.
- 2) Where a written appeal is received by the County in accordance with the Act, the County Board of Commissioners shall either: (I) place the appeal on the agenda for the next regularly scheduled meeting where unusual circumstances are found to exist; or (ii) consider and decide the appeal at the meeting at which it was received; or (iii) direct that a special meeting to consider the appeal be scheduled. In its consideration of any appeal, the County Board of Commissioners shall review the materials submitted by the appellant, any written comments received from the FOIA Coordinator, and such other information as the County Board of Commissioners deems necessary.
- 3) The County Board of Commissioners may deliberate and take one of the following actions in response to the filing of an appeal:
 - a) Reverse the disclosure denial.
 - b) Issue a written notice to the requesting person affirming the disclosure denial.
 - c) Reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.

- 4) Requesting Person's Rights on Denial of Appeal: The requesting person has 180 days from the date of the Public Body's final written denial to file an appeal in the Circuit Court. The requester may file such an action regardless of whether he/she seeks an appeal to the Board as described above. If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

SECTION 11. APPEAL RIGHTS RELATING TO A PROCESSING FEE

A requester may appeal the amount of the fee charged by the County to process his/her FOIA request. To do so, he/she must submit a written appeal for a fee reduction to Board Chairperson. The appeal must specifically state the word "appeal" in the document and specify how the requester believes the charge exceeds the amount permitted by law.

Within ten (10) business days after receiving a fee appeal, the Board Chairperson will respond in writing. The response will be either a waiver of the fee, a reduction of the fee, or an affirmation of the fee. In the event the fee is reduced or is affirmed, the Board Chairperson shall also certify that the statements in his/her determination are accurate and the fee amount complies with the procedures and guidelines of the County and Section 4 of FOIA. In the event the Board Chairperson needs more than ten (10) business days to respond to a fee appeal, he/she shall issue a notice providing the reasons for the extension and the length of the extension, which shall not exceed more than ten (10) additional business days.

A requester may appeal the Board Chairperson's determination of a fee appeal within 45 days after receiving notice of a determination. The requester may do so by filing a civil action in the Montcalm County Circuit Court. If a civil action is filed, the County may withhold processing and/or producing the request until the court resolves the dispute.

The court may reduce the fee charged by the County if it determines that the fee exceeds the amount permitted by law. If the reduction is 50 percent or more of the total fee, the court may also award an appropriate amount of reasonable attorney's fees, costs, and disbursements to the requester. If the court determines that the County acted arbitrarily and capriciously by charging an excessive fee, the court will also award punitive damages in favor of the requester in the amount of \$500. Additional penalties may be imposed by a court in the situation where it determines the County inappropriately denied a public record or charged an excessive fee as allowed by statute. Any such fines will be deposited into the general fund of the State of Michigan treasury.

If you still have questions after reviewing this document, you may contact the FOIA Coordinator. The County of Montcalm reserves the right to revise its procedures and guidelines to allow more efficient and effective administration of its obligations under FOIA and/or to comply with applicable law.

ATTACHMENT

FREEDOM OF INFORMATION ACT REQUEST FORM

I, _____, am requesting, under the
Freedom of Information Act, the following public records: (Please Print) _____

_____.

My address is _____
Street City State Zip Code

Telephone Number _____

I understand that Montcalm County will be responding to these items pursuant to the Freedom of Information Act.

Signature *Date*

FOR MONTCALM COUNTY USE ONLY

Date Received

Received By

FOIA Fee Itemization Form

(Effective July 1, 2015)

Component	Cost Calculations	Total
1. Labor Costs – Search, Location, and Examination of Records*	<p>Enter the hourly wage of lowest paid employee capable of performing the search, location and examination <div style="text-align: right;">\$ _____ per hour</div></p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) <div style="text-align: right;">_____ %</div></p> <p>Multiply the hourly wage times the fringe benefit multiplier <div style="text-align: right;">\$ _____ x 1. _____ = \$ _____</div></p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs) <div style="text-align: right;">\$ _____ + _____ = \$ _____</div></p> <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment <div style="text-align: right;">\$ _____ / 4 = \$ _____</div></p>	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate <div style="text-align: right;">_____ x \$ _____ = \$ _____</div></p>	<p>\$ _____</p>
2. Employee Labor Costs – Redaction*	<p>If performed by the public body's employee:</p> <p>Enter the hourly wage of lowest paid employee capable of performing the redaction <div style="text-align: right;">\$ _____ per hour</div></p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) <div style="text-align: right;">_____ %</div></p> <p>Multiply the hourly wage times the fringe benefit multiplier</p>	

	$\text{\$ } \underline{\hspace{2cm}} \times 1. \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{2cm}}$ <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> $\text{\$ } \underline{\hspace{2cm}} + \underline{\hspace{2cm}} = \text{\$ } \underline{\hspace{2cm}}$ <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$ } \underline{\hspace{2cm}} / 4 = \text{\$ } \underline{\hspace{2cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{2cm}} \times \text{\$ } \underline{\hspace{2cm}} = \text{\$ } \underline{\hspace{2cm}}$	<p>\\$ <u> </u></p>
<p>2. Contracted Labor Costs – Redaction*</p>	<p>If performed by Contracted Labor (Only permitted if the public body does not employ a person capable of redacting the records as determined by the FOIA Coordinator):</p> <p>Name of person or firm contracted:</p> <p>_____</p> <p>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. $\text{\\$}8.15 \times 6 = \text{\\$}48.90$)</p> <p style="text-align: right;">\text{\\$ } <u> </u> per hour</p> <p>Divide the hourly rate by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$ } \underline{\hspace{2cm}} / 4 = \text{\$ } \underline{\hspace{2cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{2cm}} \times \text{\$ } \underline{\hspace{2cm}} = \text{\$ } \underline{\hspace{2cm}}$	<p>\\$ <u> </u></p>
<p>3. Non-Paper Physical Media</p>	<p>Actual and most reasonably economical cost of:</p> <p>Flash Drives $\text{\\$ } \underline{\hspace{2cm}} \times \text{number used } \underline{\hspace{2cm}} = \text{\\$ } \underline{\hspace{2cm}}$</p> <p>Computer Discs $\text{\\$ } \underline{\hspace{2cm}} \times \text{number used } \underline{\hspace{2cm}} = \text{\\$ } \underline{\hspace{2cm}}$</p> <p>Other Media $\text{\\$ } \underline{\hspace{2cm}} \times \text{number used } \underline{\hspace{2cm}} = \text{\\$ } \underline{\hspace{2cm}}$</p>	<p>\\$ <u> </u></p>
<p>4. Paper Copies</p>	<p>Actual total incremental cost of duplication (not including labor) up to a <u>maximum of 10 cents per page</u>:</p> <p>Letter paper (8 1/2" x 11")</p> <p style="text-align: right;">number of sheets <u> </u> x $\text{\\$}0. \underline{\hspace{1cm}}$ = $\text{\\$ } \underline{\hspace{2cm}}$</p>	

	<p>Legal paper (8 1/2" x 14") number of sheets ___ x \$0. ___ = \$ ___</p> <p>Actual cost of other types of paper:</p> <p>Type of Paper: _____ number of sheets ___ x \$ _____ = \$ _____</p> <p>Type of Paper: _____ number of sheets ___ x \$ _____ = \$ _____</p> <p>(NOTE: Must print double-sided if available and costs less.)</p>	
<p>5. Labor Cost – Duplication Copying, and transferring records to non-paper physical media</p>	<p>Enter the hourly wage of lowest paid employee capable of performing the duplication, copying, or transferring digital records to non-paper physical media \$ _____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) _____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier \$ _____ x 1. _____ = \$ _____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs) \$ _____ + _____ = \$ _____</p> <p>Divide the resulting hourly wage by _____ to determine the charge per _____ () minute increment \$ _____ / 4 = \$ _____</p> <p>(NOTE: May use any time increment for this category)</p>	
	<p>Number of ___ minute increments (partial time increments must be rounded down) multiplied by the permitted rate _____ x \$ _____ = \$ _____</p>	<p>\$ _____</p>
<p>6. Mailing</p>	<p>Actual cost of mailing records in a reasonable and economical manner:</p> <p>Cost of mailing: \$ _____</p> <p>Cost of least expensive form of postal delivery confirmation: \$ _____</p> <p>Cost of expedited shipping or insurance only if specifically stipulated by the requestor:</p>	

	\$ _____	\$ _____
	Subtotal	\$ _____
Waivers and Reductions	<p>Subtract any Fee Waiver or Reduction: \$20.00 for indigency or nonprofit organization as further described in the Public Body's procedures and guidelines.</p> <p>Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$ _____</p> <p>The reduction amount due to the late response of the Public Body. 5% of fee x ____ days late = _____% reduction (maximum reduction is 50%)</p>	-\$ _____
Deposit	Subtract any good-faith deposit received: \$ _____	-\$ _____
	Total Due	\$ _____

*Note: Labor costs for search, location, examination and redaction (categories 1 and 2 on the itemization form) may not be charged unless the failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

The Court of Appeals has interpreted this provision to require that the determination be made relative to the usual or typical costs incurred by the public body in responding to FOIA requests. The key factor in determining whether the costs are "unreasonably high" is the extent to which the particular request differs from the usual request. *Bloch v Davison Cmty Schools*, (Mich.App. Apr. 26, 2011), 2011 WL 1564645.