

**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

October 26, 1999

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

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

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

***The purpose of this policy is to:***

- ❖ Assure compliance with the Freedom of Information Act by all County of Muskegon Departments and Offices as required and permitted by statutes.
- ❖ Formulate a comprehensive policy that will be applicable County-wide regarding the dissemination of information pursuant to the Freedom of Information Act (MCL.14.231 et. Sec.) (Public Act 553 of 1996), as amended.
- ❖ Communicate to County elected officials, department heads, employees, and the public the formal County Policy on Freedom of Information requests.

## I. RECEIVE THE REQUEST

1. FOIA Officer - The County Administrator, or 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.
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. All FOIA requests must be submitted in writing. If you require assistance with writing or translating, please contact the FOIA Officer. Individuals can submit their requests in letter format or complete and return a Request for Information form (FOIA #010) attached and also available on the County Board of Commissioners' website at [www.co.muskegon.mi.us/board](http://www.co.muskegon.mi.us/board). Requests received by facsimile, electronic mail or other electronic means are considered received the first business day following the transmittal.
  - b. 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.
  - c. The requested document and/or information must exist.
  - d. The requested records should NOT be exempt from disclosure under the Act as referenced in FOIA 15.243, Section 13 (see attachment).
  - e. 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).

- f. 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.

## **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. The County Department or Office should use the established FOIA fees as outlined in the attached fee schedule to **estimate the cost of providing the requested information.**
  - b. The first \$20 of a fee shall be waived for a person who receives public assistance or presents facts showing inability to pay because of indigency.
  - c. The FOIA Officer shall periodically review and recommend FOIA fee adjustments to the Muskegon County Board of Commissioners. Approved fees shall be communicated to all Departments and Elected Offices of the County.
3. In accordance with the Act (Reference 15.235, Section 5.2): Unless otherwise agreed to in writing by the person making the request, the County Department or Office (public body) shall **respond to the FOIA request within 5 business days** 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.
  - e. If the cost of the request is expected to exceed \$50, issue a notice to the requestor to provide a 50% good faith deposit prior to processing the request.

### III. 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.

COUNTY OF MUSKEGON

**FREEDOM OF INFORMATION ACT  
FEE SCHEDULE**

**Effective: October 1, 2012**

**NOTE:** This schedule **does not apply** to public records prepared by County Departments or Offices under an act or statute specifically authorizing the sale of those public records to the public.

<b><u>Type of Reproduction</u></b>	<b>Cost</b>	<b>Unit</b>
Copies of a Document	\$ .25	per page
Additional Copies of the Same Document	\$ .10	per page
Labor cost incurred in duplication, examination, review, separation, deletion, etc.	\$3.57 <sup>1</sup>	per 10 minute unit
Postage charges	Actual	per mailing

**Waivers**

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

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

**Deposits**

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

**Other**

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

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

<sup>1</sup> Hourly wage of the lowest paid departmental employee capable of retrieving the information necessary to comply with the request. The rate listed was calculated using the hourly wage (step 1) of a Clerk II plus 90% fringes (\$11.26 + 90% = \$21.40) prorated in 10 minute units.

## FREEDOM OF INFORMATION ACT

### NOTICE OF RIGHT TO APPEAL

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

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

Attn: County Board Chairperson  
c/o County Administrator  
990 Terrace Street, 4<sup>th</sup> Floor  
Muskegon, MI 49442

The Chairperson of the Board is not considered to have received written appeal until the first regularly scheduled Board meeting following submission of the written appeal.

The Chairperson of the Board shall, within 10 days after receiving written appeal, do one of the following:

Reverse the denial.

Issue written notice upholding the denial.

Reverse the denial in part and issue written notice upholding denial in part.

Under unusual circumstances, issue notice extending for not more than 10 business days the period during which the head of the public body shall respond to written appeal.

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

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





MUSKEGON COUNTY  
MICHIGAN

990 Terrace Street, Muskegon, MI 49442

FREEDOM OF INFORMATION ACT RESPONSE

To: \_\_\_\_\_

You requested: \_\_\_\_\_

(Brief description of the request)

From: \_\_\_\_\_

(County Department or Office request submitted to)

The response to your request is as follows:



Granted as indicated below:

Copies of the requested records are attached.

You may obtain copies of the requested records by first paying a fee of \$ \_\_\_\_\_

You may inspect the requested records at this office on \_\_\_\_\_ at the time of \_\_\_\_\_.

You may copy or order copies of those records after inspection.



Denied

This is a certification that the records you requested do not exist under the name given or by another name reasonably known to this public body. Please see Notice of Right to Appeal.



Partial

A certain portion of your request was denied. Please review the above Denied information for an explanation. Review the checked box under the granted response for the cost of the information that was granted.



Extension

Due to unusual circumstances, this public body requires an additional ten (10) business days to respond to your request.



Deposit

Because the cost of the requested records will exceed \$50, a good faith deposit in the amount of \$ \_\_\_\_\_ (1/2 the total estimated cost) is required in order for the County to process your request.



Exempt

The records you requested are exempt for the reason given: \_\_\_\_\_

NOTICE OF RIGHT TO APPEAL

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

Attn: County Board Chairperson  
C/O County Administrator  
990 Terrace, 4<sup>th</sup> Floor  
Muskegon, MI 49442

MCLA 15.240: (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the Circuit Court to compel disclosure of the public records. If the court determines that the public records are not exempt from disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withheld, regardless of the location of the public record...the court shall determine the matter de novo and the burden is on the public body to sustain its denial...Failure to comply with an order of the court may be punished as contempt of court...(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorney's fees, costs and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion there...(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public records, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record...

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

FREEDOM OF INFORMATION ACT (EXCERPT)  
Act 442 of 1976

**15.243 Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of executive office.**

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

- (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
  - (i) Interfere with law enforcement proceedings.
  - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
  - (iii) Constitute an unwarranted invasion of personal privacy.
  - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
  - (v) Disclose law enforcement investigative techniques or procedures.
  - (vi) Endanger the life or physical safety of law enforcement personnel.
- (c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
- (e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- (f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
  - (i) The information is submitted upon a promise of confidentiality by the public body.
  - (ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
  - (iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.
- (g) Information or records subject to the attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- (i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- (j) Appraisals of real property to be acquired by the public body until either of the following occurs:
  - (i) An agreement is entered into.
  - (ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- (k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.
- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies

clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archaeological sites. The department of history, arts, and libraries may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informant.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the social security number of an individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for

the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

**History:** 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1993, Act 82, Eff. Apr. 1, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2000, Act 88, Imd. Eff. May 1, 2000;—Am. 2001, Act 74, Imd. Eff. July 24, 2001;—Am. 2002, Act 130, Eff. May 1, 2002;—Am. 2002, Act 437, Eff. Aug. 1, 2002;—Am. 2006, Act 482, Imd. Eff. Dec. 22, 2006.

**Compiler's note:** For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

**Popular name:** Act 442

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