

FOIA Guidelines and Procedures

Purpose

The Michigan Freedom of Information Act, Public Act 442 of 1976 (“FOIA”), mandates disclosure of public records. To fulfill this mandate, the Conservation District Board of Directors has established this policy and procedure for handling FOIA requests to ensure that members of the public receive non-exempt District public records that they may request, while not unduly burdening the District.

The Freedom of Information Act was amended significantly by Public Act 563 of 2014, effective July 1, 2015 (“Act 563”), primarily with respect to the methodology for calculating the charges and fees which may be charged pursuant to FOIA, and this replacement policy has been adopted to reflect those changes.

FOIA Coordinator

In accordance with Section 6 of the Freedom of Information Act (FOIA), MCL 15.236, the District Board of Directors has designated the District Manager as the FOIA Coordinator for the District.

FOIA Requests

Requests for Public Records

All requests for public records (either to receive copies of such records or to inspect such records) made pursuant to FOIA shall be made in writing via the methods and format described above. All written requests for records pursuant to FOIA shall be processed by the FOIA Coordinator or designee.

Non-Paper Media

A requester may ask that public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. The District shall not be required to comply with such a request if it lacks the capability to provide the requested records in non-paper media form in the particular instance, and the requestor shall be so informed.

Requests to Review Records

If a request is received to review records, arrangements shall be made available to inspect records during the District’s normal business hours and when the records can reasonably be made available. The person who wishes to inspect public records shall submit a request in writing as described above prior to the District allowing the inspection of the records. A District staff member shall be present at all times during the inspection of District records if any original records are involved.

Requests Made by E-mail or Fax

These requests shall be deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made and shall be handled in the same manner as a written request noted

above. If the request is submitted by e-mail and the e-mail request is held or quarantined in the District's spam or junk e-mail folder (or other similar virus-protection software), the request shall be deemed received one business day after the District first became aware of the request.

Any employee of the District who receives a written request for a public record must immediately forward that request to the FOIA Coordinator. If a District employee receives an electronic request for a public record that is delivered to a spam or junk folder, the employee must record the date and time the electronic request was delivered to the spam or junk-mail folder and date and time the employee first became aware of the electronic request. The employee must forward those dates and times to the FOIA Coordinator with the written request.

The FOIA Coordinator shall maintain a written log of when the request is delivered to the spam or junk e-mail folder and when the District becomes aware of the request in the folder.

Informal Request

The FOIA Coordinator or District staff may provide limited, readily identifiable public records without a written request in the case of easily fulfilled, non-repetitive requests for information. Examples of documents which may be provided without the necessity of a written FOIA request include, but are not limited to:

- a. A single set of meeting minutes for a meeting held within the prior 12 months which is requested by specific date.
- b. Resolutions made by the District Board which are identified by specific name or number.
- c. Similar public records which can be readily provided.

District staff have the discretion to require a formal FOIA request. Verbal requests are not considered made under or subject to FOIA. Requesters have the option to make a written FOIA request, if so desired, in accordance with these Procedures and Guidelines.

Processing FOIA Requests

The FOIA Coordinator shall maintain a log of all written requests received, showing the nature and date of the request, determination of disposition, date of disposition and manner of final response to the FOIA request. Forms for utilization of FOIA procedures under these Procedures and Guidelines are available from the FOIA Coordinator, or on the District web site.

Time for Response

The FOIA Coordinator shall, no more than five (5) business days after the request has been made, unless a single extension of not more than ten (10) business days has been issued, or where the time limits have been agreed to upon in writing by the requesting person, provide one of the following responses:

Grant the Request. If the requested public records are not exempt from disclosure, the FOIA Coordinator shall submit copies of them to the requestor, together with a copy of the District's "Request Response Form" (see Appendix) and a copy of the requestor's FOIA request.

Deny the Request. The FOIA Coordinator shall sign and send a "Notice of Denial of FOIA Request" form (see Appendix) to the requestor, stating the reasons for denial, including an explanation of the requestor's right to seek a non-mandatory appeal of the FOIA Coordinator's decision to the District Board of Directors. Failure to timely respond to the request constitutes a denial. Denial may be made because, among other reasons, the record does not exist, it cannot be sufficiently identified from the description contained in the request, or the record is exempt from disclosure.

Grant the Request in Part and Deny the Request in Part. Public records which are partially exempt and partially subject to disclosure shall be separated or redacted, and the non-exempt material will be offered for copying or inspection. A general description of the separated or redacted information shall be provided to the requestor, unless doing so would reveal the contents of the exempt information. The FOIA Coordinator shall sign and send a "Notice of Denial of FOIA Request" form (see Appendix) to the requestor, stating the reasons why access to some of the requested records is denied, including an explanation of the requestor's right to seek a non-mandatory appeal of the FOIA Coordinator's decision to the District Board of Directors.

Extension. The FOIA Coordinator may issue a "Notice to Extend Response Time for FOIA Request" form (see Appendix) for an extension of up to ten (10) business days. The notice shall state the reason for the extension and include an estimate as to when the FOIA Coordinator expects to respond to the FOIA request.

General Requirements for FOIA Response

FOIA requests shall be fulfilled in one or more of the following ways, depending on the request:

- a. If inspection of records is requested, the District will provide a reasonable opportunity and facilities for inspection of the public records by the requesting person.
- b. Original records shall not be marked, defaced, destroyed, or otherwise altered. A person examining public records may take notes and if so, shall bring to the examination only an erasable pencil with which to make notes. No pens or indelible writing instruments are allowed. No notes, marks or writing of any kind shall be made on the records themselves.
- c. A District staff member shall be present at all times during the inspection of District records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the District's cost of this monitoring service, a fee shall be paid to the District for the personnel time involved, as provided for in these Procedures and Guidelines.
- d. Original records shall not be removed from the location provided for inspection. Original documents may be removed from and replaced in District files only by authorized District personnel.
- e. A requesting person may not remove records or files from the area provided for inspection. Copying of records for the requesting person shall be conducted only by authorized District personnel.
- f. In some special situations in which inspection of records is requested, the FOIA Coordinator may determine, on a case-by-case basis, that only a copy of the record may be inspected. Situations where original records are likely to require copying prior to inspection include the following:

- (1) The records include exempt information that must be redacted.
 - (2) The records are old or delicate, or contain information that could not easily be replicated.
 - (3) The records are in digital format or are part of a database not available for public inspection.
- g. A person requesting to inspect District records must make an appointment with the FOIA Coordinator. Appointments will be scheduled during the District's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator.
- h. The FOIA Coordinator will make reasonable efforts to allow a requesting person to inspect records for up to four hours per appointment; provided, however, that inspections will be cut short, postponed or rescheduled when necessary to avoid unreasonable interference with District staff's duties and responsibilities.
- i. Provide copies of records if so requested.
 - j. The FOIA does not require the District to make a compilation, summary or report of the requested public records or other requested information.

Assessment of Fees for FOIA Request

The FOIA permits the District to charge the requesting person a fee for labor costs, mailing and other costs associated with responding to the request for public records, if the failure to charge a fee would result in unreasonably high costs to the District because of the nature of the request, and the District specifically identifies the nature of the unreasonably high costs. (MCL 15.243(1) and (3)). It is hereby determined that devoting more than fifteen minutes to responding to a FOIA request will result in unreasonably high costs to the District, unless the cost of such response is borne by the requesting person.

The following fee guidelines for calculating labor and material costs incurred in processing FOIA requests are established pursuant to MCL 15.234(3). The fees will be calculated on a "Fee Calculation Form" (see Appendix), and a copy of the form will be provided to the requestor before further processing of the request is completed.

1. Fees will be uniform and not dependent upon the identity of the requesting person.
2. Fees will be itemized using a fee calculation form and may include:
 - a. Labor cost to Search, Locate and Examine Records. The District may charge for the labor costs directly associated with searching for, locating, and examining public records in conjunction with receiving and fulfilling a FOIA request.
 - b. Labor cost to Review, Separate and Delete Exempt from Non-Exempt Records. The District may charge for the labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt material from non-exempt material. The review and separation of exempt from non-exempt material may be conducted by a District official or employee or, if necessary, outside legal counsel.
 - c. For services performed by an outside contractor or legal counsel. As determined by the FOIA Coordinator on a case-by-case basis, the District may charge the contractor's or legal counsel's time, provided, however, that such time to be charged shall not exceed an amount equal to six (6) times the then-current State minimum hourly wage rate determined under Section 4 of the Workforce Opportunity Wage Act, Act 138 of the Public Acts of Michigan of 2014 ("Act 138"), as that rate may change from time to time. As of the date of adoption of these Procedures and Guidelines, that wage rate is \$9.45 per hour. If the rate increases under Act 138,

the rate charged under these Procedures and Guidelines shall automatically change without action by the District Board of Directors or amendment of these Procedures and Guidelines. In charging such time for an outside contractor or legal counsel, the District shall provide notice to the requesting person of the name of the contracted person or firm in the District's detailed itemization of costs required by the Act. The charges for such services will be billed in increments of fifteen (15) minutes or more and all partial time increments will be rounded downward.

d. Labor cost of Duplication of Records. The District may charge for the labor costs directly associated with duplication of records, including making paper copies, making digital copies, or transferring digital public records to be given to the requesting person on non-paper physical media or through the Internet or other electronic means as stipulated by the requesting person.

e. Copying Charges. Duplication of public records and documents will be at the rate of \$.05 per page for black and \$.10 per page for color copies.

f. Cost of Non-paper Media. The District may charge for the cost of CDs, DVDs or other electronic media materials needed to fulfill a request.

g. Cost of Mailing. The District will charge the actual cost of postage for sending records to the requesting person.

h. Labor cost of Monitoring Inspection of Records. The District may charge for time to monitor a requester inspecting original records. Note: Section 3(3) of the FOIA, MCL 15.233(3), provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."

1. Calculation of Labor Costs. The District will calculate labor costs using the hourly wage of the District's lowest paid employee capable of performing the required task, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of fifteen (15) minutes with all partial increments rounded down. The hourly wage will be based on the District's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of the benefits.

2. No District employee shall be required to work overtime or include overtime wages in the labor costs described in these Procedures and Guidelines.

3. If a requester submits an affidavit of indigence, the first \$20.00 of a fee will be waived (up to two waivers a calendar year). A

requesting person must include a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration. Other than \$20.00 for cases of indigence, no District employee shall waive a fee or any part of a fee without authorization from the FOIA Coordinator.

4. If a statute authorizes the sale or production of public records to the public for a specified fee or if a fee for production of public records is otherwise set by statute, the District will charge the statutory fee in lieu of a fee calculated using the guidelines set forth above.

Deposit Requirements

If the District estimates a fee greater than \$50.00 to process a FOIA request, the District will require a good-faith deposit from the requester before processing the request. The deposit shall not exceed one-half (½) of the total estimated fee. Any written notice containing a request for a deposit shall also contain a best efforts estimate by the District regarding the time frame after a deposit is received, that it will take the District to provide the public records to the requester. The time frame estimate is not binding upon the District, but the District shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on the State's public policy under Section 1 of the FOIA, MCL 15.231 and the nature of the request in the particular instance.

Record Retention

The FOIA Coordinator shall maintain all FOIA requests on file for at least one year.

Exemptions to FOIA Request

The FOIA coordinator may exempt from disclosure any records identified as exempt from disclosure in Section 13 of the FOIA. The FOIA coordinator shall exempt from disclosure:

a. That portion of any public record disclosing a person's social security number.
b. Information protected under the Family Educational Rights and Privacy Act of 1974.
c. Minutes of any closed session meeting, disclosure of which is prohibited by the Open Meetings Act.
d. Any other public record, information or material, the disclosure of which is prohibited by law.

Appeals

Appeal of Denial of Request

If a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the following:

The appeal must be submitted in writing to the District Board of Directors, to the attention of the Chairman of the Board. A "FOIA Appeal Form-To Appeal A Denial of Records" form (see Appendix) can be provided by the District to a requestor and be used to submit an appeal.

The written appeal must specifically state the word "appeal" and identify the reason or reasons advanced for the reversal or modification of the denial.

If a written appeal is received by the Chairman of the Board of Directors consistent with these Procedures and Guidelines, and the Act, the Board shall either:

- a. place the appeal on the agenda for the next regularly scheduled meeting, to be decided within ten (10) business days thereafter; or
- b. schedule a special meeting to consider the appeal, which special meeting should be held no later than ten (10) business days following the next regularly scheduled meeting.

The District Board of Directors may deliberate and shall take one of the following actions in response to

the filing of an appeal:

- a. Reverse the denial.
- b. Affirm the denial and Issue a written notice to the requesting person.
- c. Reverse the denial in part and issue a written notice to the requesting person affirming the denial in part.
- d. Under unusual circumstances, issue a notice extending not more than the (10) business days the period during which the Board shall respond to the written appeal. Only one written notice extending the response time is allowed.

The Board's decision on the appeal will be recorded on a "Denial of Request or Fee Appeal Review Response Form" (see Appendix), with a copy provided to the requestor.

Fee Appeal

A requesting person may appeal the amount of a fee or deposit if that fee or deposit exceeds the amount permitted under these Procedures and Guidelines and the FOIA. An appeal on the amount of the fee may be made to the District Board of Directors in accordance with the provisions of *Appeal of Denial of Request*, above.

A "FOIA Appeal Form-To Appeal An Excess Fee" form (see Appendix) can be provided by the District to a requestor and be used to submit an appeal.

In the fee appeal, the requesting person must specifically include the word "appeal" and identify how the required fee exceeds the amount permitted under these Procedures and Guidelines or the Act.

Notwithstanding the appeal review by the Board noted above, and in accordance with FOIA, a requesting person may commence a civil action in the Circuit Court for a fee reduction; provided, however, that such appeal must be filed within forty-five (45) days after receiving the notice of the required fee or a determination of an appeal to the District Board of Directors. If the requesting person files a fee appeal with the Circuit Court, the District will not complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

Within ten (10) business days after receiving a written fee appeal, the District Board of Directors shall do one of the following:

- a. Waive the fee.
- b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of FOIA and these Procedures and Guidelines that supports the remaining fee. The determination shall include a certification from the Chairman of the Board of Directors, on behalf of the District Board, that the statements in the determination are accurate at that the reduced fee amount complies with the District's Procedures and Guidelines, and Section 4 of the Act.
- c. Uphold the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Chairman of the Board of Directors, on behalf of the District Board, that the statements in the determination are accurate and that the fee amount complies with the District's Procedures and Guidelines, and Section 4 of the Act.
- d. Issue a notice extending for not more than ten (10) business days the period during which the District Board of Directors must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. Only one written notice extending the

response time is allowed.

In accordance with FOIA, the District Board of Directors is not considered to have received a written fee appeal until the first regularly scheduled meeting of the Board following submission of the written appeal.

In accordance with Section 4(13) of FOIA, a deposit required to be paid by the District is considered a “fee.”

The Board’s decision on the appeal will be recorded on a “Denial of Request or Fee Appeal Review Response Form” (see Appendix), with a copy provided to the requestor.

Civil Action

An appeal of a determination by the FOIA Coordinator or decision of the District Board of Directors may be taken to the Circuit Court. Amendments to Procedures The District Board of Directors may amend or supplement this policy, from time to time, in the Board’s sole discretion.

Forms The District FOIA Coordinator and staff may prepare appropriate forms for FOIA requests and responses, reflecting the amendments to FOIA made by Act 563, to assist and standardize FOIA requests and responses.

Availability of Procedures and Guideline Summary A copy of these Procedures and Guidelines, and a summary of the same, shall be available at the District office and shall be posted on the District’s website at <http://washtenawcd.org/FOIA.php>, in accordance with the FOIA. See “Public Summary FOIA Procedures and Guidelines” in the Appendix.

Effective Date These Freedom of Information Act Procedures and Guidelines became effective on July 1, 2015.

This policy was adopted: September 3, 2015