



Office of Administration

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FOIA Procedures and Guidelines

Statement of Principles:

Our policy is to comply with the Freedom of Information Act (FOIA) in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request. Within that law, we will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records.

Our governing board has established the following written procedures and guidelines to implement the FOIA and has created separate and specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. Both the procedures and guidelines are available to the public without cost in person or upon oral or written request. All of our FOIA forms, including this set of Procedures and Guidelines are also available on our website at: www.countyofnewaygo.com.

Section 1: General Policies

Our Board has named our County Administrator as the FOIA Coordinator and all requests, appeals or other communications regarding FOIA should be directed to this person.

If a request for a public record is received by mail it shall be deemed received upon receipt by the FOIA Coordinator. If the request is sent via fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to our 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 create a FOIA log assigning the request a number and then logging the date of receipt, response, appeal and any response. If the request was delivered to the spam or junk-mail folder, the date of original receipt and the date the FOIA Coordinator became aware of the request shall be logged as well.

We are not obligated to create a new public record or make a compilation or summary of information which does not already exist. We are not obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records and who they are received by on file for a period of at least one year.

Section 2: Requesting a Public Record

Other than that it be in writing and describe the records requested with specificity, no specific form to submit a request for a public record is required. The FOIA Coordinator may make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by us may be submitted to the FOIA Coordinator by letter, fax, or email.

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

A request must sufficiently describe a public record so as to enable our FOIA Coordinator to identify and find the requested public record. Upon receipt of a written FOIA request, all employees shall promptly forward the request to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. We will comply with the request only if we possess the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by us on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber. The time requirements as specified in the FOIA shall apply.

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, the FOIA Coordinator will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day. The FOIA Coordinator may use the FOIA Response Form and may provide a free copy of these FOIA Procedures and Guidelines and our FOIA Summary with the response or make reference to the county website where it can be located.

We will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request we need an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on our website.

When a request is granted:

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, including the cost of duplication, media holding the request, mailing, labor rates, labor time and labor benefits charged.

If the cost of processing a FOIA request is \$50.00 or less, the requester will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50.00 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, we will require a good-faith deposit pursuant to Section 4 of this policy 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 us to process the request and also provide a best efforts estimate of a time frame it will take us to provide the records to the requestor. The best efforts estimate shall be nonbinding on us, 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 FOIA.

When a request is denied or denied in part:

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 us; 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 Chairman of the County Board of Commissioners or seek judicial review in 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 \$1,000.00, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

Requests to inspect public records:

We will 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 our records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal our operations.

Requests for certified copies:

The FOIA Coordinator 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, the requestor may 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 paid us in full for copies of public records made in fulfillment of a previously granted request, the FOIA Coordinator may 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 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 our possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by us to provide the records;
- Ninety (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 us; 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 us;
- The prior request is subsequently paid in full for the applicable request prior to another written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to us.

Section 5: Calculation of Fees

A fee may be charged for the labor cost of copying/duplication.

A fee will **not** be charged for the labor 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 us because of the nature of the request in the particular instance, and we specifically identify the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are “unreasonably high” when they are excessive and beyond the normal or usual amount for those services compared to the costs of typical FOIA requests.

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

- 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 the public records are from more than one department or whether various 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.
- Resources available and demands on the Public entity.

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. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. We will use a conservative 20% factor for this charge.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- In unusual circumstances we might contract for labor costs, which will pass along at our cost but in no event to exceed the hourly rate of \$48.90 (6 times the state minimum hourly wage).

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 we have the technological capability necessary to provide the public record in the requested non-paper physical media format.
- We will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of our technology infrastructure.

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

- Paper black & white copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper or color copies will reflect the actual cost of reproduction.
- Where possible all attempts will be made to provide records using double-sided printing, if it provides cost-savings.

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

If the FOIA Coordinator does not respond to a written request in a timely manner, we must:

- Reduce the labor costs by 5% for each day the request exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
 - Our late response was willful and intentional,
 - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - 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 email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of Fees

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 it can be considered as primarily benefitting the general public. The Board of Commissioners may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

Section 7: Discounted Fees

Indigence:

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit 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 indigence.

An individual is not eligible to receive the waiver if:

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

An affidavit is sworn statement.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals:

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, 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, 1974 PA 258, MCL 330.1931.
 - Is accompanied by documentation of its designation by the state, if requested by the public body.

Section 8: 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 appeal to The Board of Commissioners by filing an appeal of the denial with the FOIA Coordinator or that board.

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. Our FOIA Appeal Form (To Appeal a Denial of Records) may be used.

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

Within 10 business days of receiving the appeal the Board of Commissioners or their designee 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; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which our board shall respond to the written appeal. Our board shall not issue more than one (1) notice of extension for a particular written appeal.

If the Board of Commissioners fails to respond to a written appeal, or if the Board of Commissioners upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in the Michigan circuit court. In addition, whether or not a requestor submitted an appeal of a denial to the Board of Commissioners, he or she may file a civil action in circuit court within 180 days after our final determination to deny the request.

Section 9: Appeal of an Excessive FOIA Processing Fee

“Fee” means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by us to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the Board of Commissioners by submitting a written appeal for a fee reduction.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. Our FOIA Appeal Form (To Appeal an Excess Fee) may be used.

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

Within 10 business days after receiving the appeal, our board shall respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than ten (10) business days the period during which our board will respond to the written appeal. We will not issue more than one (1) notice of extension for a particular written appeal.

Where our board reduces or upholds the fee, the determination must include a certification from our board that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of our board’s determination of an appeal, the requesting person may commence a civil action in the Michigan circuit court for a fee reduction. If a civil action is commenced against us for an excess fee, we are not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless **one** of the following applies:

- We do not provide for appeals of fees,
- Our board failed to respond to a written appeal as required, or
- Our board issued a determination to a written appeal.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the Board of Commissioners these Procedures and Guidelines are 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 Board of Commissioners

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 Board of Commissioners of any change these Policies and Guidelines.

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

Section 11: Appendix of Our FOIA Forms

- Request for Public Records Form
- FOIA Response Form
- FOIA Invoice Form
- Appeal of Denial of Records Form
- Appeal of Fee Form