

**TOWNSHIP OF JEFFERSON
Cass County, Michigan
FOIA PROCEDURES AND GUIDELINES**

Purpose and Scope

To comply with and implement the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended.

General Policies

The Township Clerk shall serve as the Township's FOIA Coordinator and be responsible for accepting and processing requests for the Township's public records and approving a denial of a request under FOIA. The FOIA Coordinator may designate another Township official or employee to accept and process public records requests and approve denials. The FOIA Coordinator shall keep a copy of all written requests for public records on file for a period of at least one year.

Neither FOIA nor these Procedures and Guidelines obligates the Township to:

- create a new public record;
- make a compilation, summary, or report of information;
- answer questions contained in requests for public records; or
- answer questions regarding the content of the records.

These Procedures and Guidelines and the associated Public Summary shall be publicly available without charge upon request by visitors at the Township's office and on the Township's website.

Requesting a Public Record

All requests to inspect or obtain copies of public records prepared, owned, used, possessed, or retained by the Township in the performance of an official function must be submitted in a writing of any kind or on the Township's FOIA Request Form. Written requests may be submitted in person during Township office hours, by mail to the Township address, or by electronic means including fax or email. Upon receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing. A request must describe a public record in a manner sufficient to enable Township personnel to find the requested public record.

A person may request that public records be provided on non-paper physical media, emailed, or other otherwise provided in digital form in lieu of paper copies. The Township will comply with the request only if it has the technological capability necessary 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 Jefferson Township on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

Upon receipt of a verbal request for information believed to be available on the Township's website, a Township employee shall, where practicable and to the best of the employee's knowledge, inform the requestor about the pertinent website address.

A person serving a sentence of imprisonment in a local, state, or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Processing a Request

Unless otherwise agreed to in writing by the person making the request, the Township will issue a response within 5 business days of receiving a FOIA request. If a request is made by fax, email, or other electronic means, the request is deemed received on the following business day. If a request sent by email is delivered to a Township spam or junk-mail folder, the request is not deemed received until the day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall keep record of the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The Township will respond to a request by doing one of the following:

- Granting the request.
- Issuing a written notice denying the request.
- Granting the request in part and issue a written notice denying the request in part.
- Issuing a notice extending the period for a response by not more than 10 business days. The notice shall specify the reasons for the extension, and only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Township's website.

The Township's response to a public records request will provide the website link to these procedures and guidelines and the associated public summary in lieu of paper copies.

When a request is granted:

If the request is granted, or granted in part, the FOIA Coordinator shall provide the requestor a detailed itemization of the allowable costs incurred to process the request. The FOIA Coordinator shall require payment in full of the allowable fees associated with responding to the request before the public record is made available.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a signed Notice of Denial which shall include as applicable:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the Township; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to appeal the denial to the Township Supervisor or seek judicial review in the Cass County Circuit Court;
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, if they prevail in Circuit Court.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial, seek clarification or amendment of the request by the requestor. Any clarification or amendment will be considered a new request for the application of the timelines described in this section.

Requests to inspect public records:

The Township shall provide reasonable opportunities and facilities for persons to inspect and examine public records during normal business hours. A person cannot remove the public records from the place the township has provided for the inspection. The FOIA Coordinator is authorized to establish rules regulating the manner in which records may be viewed so as to protect Township records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Township operations.

The FOIA coordinator shall determine on a case-by-case basis when the township will provide copies of original records, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection. A fee will be charged for copies made to enable public inspection of records, according to the township's FOIA policy.

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.

Fee Deposits

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

If a requestor has not paid the Township in full for copies of public records from a previously granted 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 apply:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the Township's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Township to provide the records;
- 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 the Township; 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 Township;
- The Township is subsequently paid in full for the applicable prior 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 the Township.

When requiring a good-faith deposit, the FOIA Coordinator shall provide the requestor a detailed itemization of the allowable costs estimated to be incurred by the Township to process the request and a best efforts estimate of a time frame it will take the Township to provide the records to the requestor in a manner consistent the state's public policy and the nature of the request. The best efforts estimate is nonbinding on the Township, but will be made in good faith and be reasonably accurate.

Calculation of Fees

The Township may charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the internet.

- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Township.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Township.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the township's website if you ask for the township to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the township's website if you ask for the township to make copies.
- The cost to mail or send a public record to a requestor.

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 Township 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.
- The Township may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at 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 the Township has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Township will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the Township's technology infrastructure.

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

- Paper copies of public records made on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The Township will provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The Township may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

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

- Reduce the labor costs by 5% for each day the Township exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The Township's 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.

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 the Township because of the nature of the request, and the Township specifically identifies the nature of the unreasonably high costs. Costs are deemed "unreasonably high" when they are excessive and beyond the usual amount for those services when compared to the costs of the township's usual FOIA requests.

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

- 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 Township department or whether various Township offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

Discounted Fees

A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the FOIA Coordinator or township board determines that a waiver or reduction of the fee is in the public interest as primarily benefiting the general public.

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 the Township 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.

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.

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, the requestor may appeal to the Township Board. The appeal must be submitted to the Township Supervisor in writing, specifically state the word "appeal" and identify the reason(s) the requestor is seeking a reversal of the denial. The Township FOIA Appeal Form (To Appeal a Denial of Records), may be used.

A written appeal is deemed to be received as of the first regularly scheduled Township Board meeting following submission of the written appeal. Within 10 business days of receiving the appeal the Township Board will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, issuing a notice extending for not more than 10 business days the period during which the Township Board shall respond to the written appeal. The Township Board shall not issue more than 1 notice of extension for a particular written appeal.

If the Township Board fails to respond to a written appeal, or if the Township Board upholds all or a portion of the disclosure denial appealed, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Cass County Circuit Court.

Whether or not an appeal of a denial was taken to the Township Board, a requestor may file a civil action in Cass County Circuit Court within 180 days after the Township's final determination to deny the request.

Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged to process a FOIA request, including any deposit, exceeds the amount permitted by this policy or state law, the requestor must first appeal for a fee reduction to the Township Board. The appeal shall be submitted to the Township Supervisor in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The Township FOIA Appeal Form (To Appeal an Excess Fee) may be used.

A written appeal is deemed to be received as of the first regularly scheduled Township Board meeting following submission of the written appeal. Within 10 business days after receiving the appeal, the Township Board will 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(s) for extending for not more than 10 business days the period during which the Township Board will respond to the appeal. The Township Board shall not issue more than 1 notice of extension for a particular appeal.

A determination to reduce or uphold a fee shall include a certification from the Township Board that the statements in the determination are accurate and that the fee amount complies with its publicly available procedures and guidelines and Section 4 of FOIA.

Within 45 days after the Township Board's determination of an appeal, the requesting person may commence a civil action in Cass County Circuit Court for a fee reduction. If a civil action is commenced against the Township for an excess fee, the Township is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by Township, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of these Procedures and Guidelines is found to be in conflict with any previous policy promulgated by the Township, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any state statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the Township, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with state law. The FOIA Coordinator shall inform the Township Board of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines become effective October 8, 2015.

Appendix of Jefferson Township FOIA Forms

- Request for Public Records Form
- Notice to Extend Response Time Form
- Detailed Cost Itemization Form
- Notice of Denial Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form