



# County of Ottawa

## FREEDOM OF INFORMATION ACT POLICY

### **I. POLICY**

The purpose of this policy is to implement the requirements of the Freedom of Information Act, MCLA 15.231 et seq., as amended.

### **II. STATUTORY REFERENCES**

MCL 15.231 et seq., as amended; MCL 46.11(m).

### **III. COUNTY LEGISLATIVE OR HISTORICAL REFERENCES**

The original Board policy on this subject matter was adopted in

Board of Commissioners Resolution Number and Policy Adoption Date: B/C 15-114, June 23, 2015

Board of Commissioner Resolution Number and Review Date: B/C 15-109, June 9, 2015

Name and Date of Last Committee Review: Planning and Policy Committee June 11, 2015

Last Review by Internal Policy Review Team:

### **IV. EFFECTIVE DATE**

This Policy shall become effective on July 1, 2015, and will have no retroactive effect.



# County of Ottawa

## V. PROCEDURE

### A. Appointment of Freedom of Information Act Coordinator:

1. The Ottawa County Board of Commissioners shall designate a person to act as Freedom of Information Act Coordinator for Ottawa County. The Freedom of Information Act Coordinator shall be responsible for responding to requests for access to Ottawa County records made under the Freedom of Information Act, for approving a denial of a request for records under MCL 15.235(4) and (5), and for coordinating appeals under the provisions of the Freedom of Information Act. On particular matters, as may be determined by the Freedom of Information Act Coordinator, he/she may designate another person or persons to act as Freedom of Information Act Coordinator in accepting and processing requests made under the Freedom of Information Act, in approving a denial for such records, and for coordinating an appeal from such a denial.

### B. Compliance With Freedom of Information Act:

1. All requests made under the provisions of the Freedom of Information Act for access to public records shall be processed in accordance with the requirements of that Act, as amended. Activities pursuant to this Policy shall be consistent with the public policy statement of the Michigan Freedom of Information Act, set forth at MCL 15.231(2):

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

Activities pursuant to this Policy shall also be conducted in a manner which respects and protects the health, safety, and public welfare of Ottawa County, including but not limited to protected privacy interests, through the appropriate assertion of exemptions from disclosure, all as provided for in MCL 15.243.

### C. Coordination With Departments and Offices:

1. The adoption of this Policy shall not be construed as interfering with the operations of county departments and offices which have independent statutory functions or responsibilities for the custody, control, and release of public records. However, those departments and offices may request the assistance of the Freedom of Information Act Coordinator with respect to requests made for access to public records under the provisions of the Freedom of Information Act,



# County of Ottawa

and shall refer to the Freedom of Information Act Coordinator all instances where the county department or office having custody or control of the requested records: (a) believes that those records may be exempt from disclosure under the Freedom of Information Act, (b) determines that the requested public records do not exist or cannot be located, or (c) believes that the request cannot be routinely processed by the department or office in compliance with the requirements of the Freedom of Information Act, as amended.

## D. Fees for Furnishing Public Records, Calculation of Costs:

1. All County departments and offices shall charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to the provisions of Section 4 of the Freedom of Information Act, MCL 15.234, as amended, the fee shall be limited to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information, and shall be calculated in accordance with the requirements of the Freedom of Information Act, as amended.
2. The County may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds \$50.00. The deposit shall not exceed  $\frac{1}{2}$  of the total fee.
3. In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), the County may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. The County shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the County because of the nature of the request in the particular instances, and the County specifically identifies the nature of these unreasonably high costs. The County shall establish and publish administrative procedures and guidelines to implement this provision.
4. 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 County determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to



# County of Ottawa

pay the cost because of indigency. Any discount will be processed in accordance with the requirements of MCL 15.234.

5. In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion a county department or office shall charge the hourly wage of the lowest paid employee capable of retrieving the information necessary to comply with a request, and shall follow the requirements of MCL 15.234.
6. The Ottawa County Administrator, working with the Freedom of Information Act Coordinator, shall establish administrative procedures and guidelines to implement the requirements of MCL 15.231 et seq., and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to Ottawa County and explaining how to understand Ottawa County's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. All such summary, procedures, and guidelines shall be written by Ottawa County in compliance with the provisions of MCL 15.231 et seq.
7. In addition to the fee as determining in this section, paper copies shall be charged for at the rate of 10 cents per page, and may be furnished at that rate in "double-sided" or "duplex" format. Specific rates per page or other unit of information for requests made for public records stored in electronic or other media and formats may also be set from time-to-time by resolution of the Ottawa County Board of Commissioners, in accordance with the provisions of MCL 15.231 et seq.

## VI. REVIEW PERIOD

The Internal Policy Review Team will review this Policy at least once every two years, and will make recommendations for changes to the Planning & Policy Committee.

# Ottawa County Board of Commissioners

## **FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES**

### I. INTRODUCTION

The Michigan Freedom of Information Act, 1976 P.A. 442, MCL §15.231 *et seq.*, as amended, (“FOIA” or the “Act”) was enacted by the Michigan Legislature to provide for public access to certain public records of public bodies with the express intent “that all Persons, ... are entitled to full and complete information regarding the affairs of the government and the official acts of those who represent them as public officials and public employees...”

The FOIA sets requirements for the disclosure of public records by public bodies upon written request by a requester. The County of Ottawa is a public body under the Act, and will comply with its requirements. Ottawa County will designate a FOIA Coordinator to accept, process, track, grant, and/or deny requests in writing as required by the Act.

Terms not defined herein shall have the meaning given under the FOIA.

### II. THE FOIA COORDINATOR

- a. Designation of the FOIA Coordinator: The FOIA Coordinator shall be the Ottawa County Corporation Counsel, or his or her designee. The FOIA Coordinator is authorized to designate other employees within the departments, offices, and agencies of Ottawa County government to act on his or her behalf.
- b. Receiving and Processing Requests. The FOIA Coordinator shall be responsible for accepting and processing all FOIA requests. The FOIA Coordinator shall make all determinations regarding whether the FOIA requests are granted or denied, and whether the response time should be extended. If the FOIA Coordinator issues a notice extending the period to respond, he or she shall specify a reason and the date by which the Ottawa County will respond.
- c. Determination of Exempt Material. The FOIA Coordinator shall determine whether any of the information in the requested public records is exempt from disclosure. The FOIA Coordinator shall also determine whether there is an Ottawa County employee capable of redacting the necessary information. If there is no such employee, the FOIA Coordinator shall arrange for a person or firm of the FOIA Coordinator’s choosing to provide this service.
- d. Determination of Cost and Fees. If costs and fees are to be assessed under the Freedom of Information Act, the FOIA Coordinator shall determine the costs of complying with each FOIA request by completing the Fee Itemization Form in compliance with the cost guidelines provided in Section IX. The FOIA

Coordinator shall also determine whether each FOIA request would result in an unreasonably high cost to the Public Body and whether a fee may be charged for the request. The FOIA Coordinator shall also determine if a deposit shall be required in accordance with Section X herein.

- e. Revising Forms. The FOIA Coordinator is authorized to make reasonable revisions to and create necessary forms to implement these Procedures and Guidelines and administer the FOIA Program.
- f. Compliance. All actions taken by the FOIA Coordinator or his or her designee under this section shall be consistent with the requirements of FOIA and these Procedures and Guidelines.

### III. RIGHT TO INSPECT, COPY, OR RECEIVE PUBLIC RECORD

A requester has a right to inspect, copy, or receive copies of requested public records. If a person requests to inspect public records without having the public records duplicated, the following shall apply:

- a. The requester shall make an appointment with the FOIA Coordinator or a person duly designated by the FOIA Coordinator, who shall provide the requester a reasonable opportunity for inspection and examination of the public records during usual business hours.
- b. Ottawa County shall make reasonable accommodations to a person requesting the opportunity to inspect public records, but at all times shall protect public records from loss, unauthorized alteration, mutilation, or destruction, and shall also prevent the excessive and unreasonable interference with the discharge of its functions. To this extent, any person requesting to inspect the public records shall be under the direct supervision of the FOIA Coordinator or his or her designee at all times.
- c. If the requested public records contain exempt information, the FOIA Coordinator will make copies for inspection with the exempt material redacted.

### IV. PROCEDURES AND GUIDELINES

- a. Procedures and Guidelines Available at No Cost. Ottawa County will keep copies of these Procedures and Guidelines, including a written Public Summary, available at its public office and will provide a copy, at no cost, to any person requesting the Procedures and Guidelines.
- b. Maintaining Procedures and Guidelines on Website. Ottawa County shall post and maintain these Procedures and Guidelines on its website.

- c. Responses to Written Requests. A copy of these Procedures and Guidelines, including a written Public Summary, shall be included with all responses. If the Procedures and Guidelines and/or written public summary are maintained on Ottawa County's website, a link to the documents may be provided in lieu of providing paper copies.

## V. WRITTEN REQUESTS

- a. Submit in Writing. All requests for public records must be submitted in writing to the FOIA Coordinator. The writing may be submitted by mail, fax, electronic mail, or other electronic transmission. Requests for public records should be as specific as possible and must describe the public record sufficiently to enable Ottawa County to find the public record.
- b. Subscription. A person may subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall remain valid for up to six (6) months, at the request of the subscriber, and shall be renewable.
- c. Record Retention. The FOIA Coordinator will retain a copy of all written requests for public records for no less than 1 year.

## VI. TIME TO RESPOND

- a. When a Request is Considered Received. Requests submitted by mail are considered received on the day they arrive at the offices of Ottawa County. A request made by fax, electronic mail, or other electronic transmission is not considered received until 1 business day after the electronic transmission is made. If the electronic mail is delivered to Ottawa County's spam or junk folder, the request is not considered received until 1 day after Ottawa County becomes aware of the request. Ottawa County shall keep a record of when the request is delivered to the spam or junk mail folder and when Ottawa County first becomes aware of the request.
  - i. The FOIA Coordinator shall review the spam and/or junk mail folders for public record requests at reasonably frequent intervals, but in any event not less frequently than once every fourteen calendar days.
  - ii. Employees of Ottawa County who maintain email addresses through Ottawa County are required to review the spam and/or junk mail folders for public record requests at reasonably frequent intervals, but in any event not less frequently than once every fourteen calendar days. Ottawa County must promptly forward all FOIA requests to the FOIA Coordinator.
- b. Response within Five Business Days; Extension. Unless otherwise agreed to in writing by the requester, Ottawa County shall respond to the request within five

(5) business days after receipt. However, Ottawa County may issue a notice extending the time to respond for not more than ten (10) business days, which shall include the reason for the extension and the date by which Ottawa County will respond. Ottawa County shall not issue more than one (1) notice of extension for a particular request.

## VII. FORM OF RESPONSE

- a. Within five (5) business days after Ottawa County receives a request, the FOIA Coordinator shall respond to the request by:
  - i. Granting the request;
  - ii. Issuing a written notice denying the request;
  - iii. Granting the request in part and issuing a written notice denying the request in part; or
  - iv. Issuing a notice extending the time to respond by ten (10) business days.
- b. Failure to respond to a request shall only constitute a final determination to deny the request if:
  - i. Failure was willful and intentional; OR
  - ii. The written request included language requesting information within the first 250 words of body of request or the envelope or subject line of the email, letter, or fax included the following words, characters or abbreviations, or recognizable misspellings: “Freedom of Information,” “Information,” “FOIA,” “Copy.”
- c. Denial of Request. To the extent a request, or any portion thereof, is denied, the written response shall be signed by the FOIA Coordinator and shall contain all of the following:
  - i. An explanation of the basis for denial under FOIA or another statute, if that is the reason for denying the request;
  - ii. A certificate that the public record does not exist under the name given or by another name reasonably known, if that is the reason for denying the request;
  - iii. A description of a public record or information on a public record that is separated or deleted, if such separation or deletion is so made;
  - iv. A full explanation of the requestor’s right to appeal to the Chairperson of the Ottawa County Board of Commissioners or to seek judicial review of the denial; and
  - v. Notice of the right to receive attorney’s fees and damages if the court determines Ottawa County has not complied.

## VIII. EXEMPTIONS and PROTECTION OF CONFIDENTIAL INFORMATION

- a. Exempt Material Policy. In order to protect individuals from an invasion of privacy, to ensure there is no interference with the safety of the public, and to ensure the safe and efficient operations of Ottawa County, it is the policy of Ottawa County to exempt from disclosure all information that should be exempted in accordance with FOIA.
- b. Mandatory Exemptions. Ottawa County must exempt information that, if released, would prevent Ottawa County from complying with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g.

## IX. COSTS

It shall be the policy of the Ottawa County to recover all costs associated with responding to FOIA requests to the extent permitted by FOIA. Ottawa County hereby establishes the following fee schedule and rules relating to the collection of fees in connection with the processing and fulfillment of FOIA requests:

- a. Cost Components Associated With Requests Resulting In Unreasonably High Costs. The FOIA Coordinator may only charge a fee for the costs involved with searching for, locating and examining a public record, and the deletion and separation of exempt from non-exempt information when it results in unreasonably high costs to Ottawa County. In determining what is an unreasonably high cost to Ottawa County the FOIA Coordinator shall consider each request on a case-by-case basis to determine how the nature of the particular request differs from the usual request received by Ottawa County. If the request would result in a cost that is unreasonably high relative to the requests Ottawa County usually receives, Ottawa County may charge for completing the request. *See Bloch v Davison Community Schools*, 2011 WL 1564645 (Mich Ct App). The FOIA Coordinator shall also consider the following factors to determine whether the cost is unreasonably high:
  1. Volume of public records requested;
  2. The estimated hours of labor required to complete the request;
  3. The complexity of searching for, examining, and reviewing, a public record, and the deletion and separation of exempt from non-exempt information;
  4. The need to search for, examine, and review public records from different departments, commissions, boards, or committees for Ottawa County;
  5. The available staffing for responding to the request; and
  6. Any other similar factors designated by the FOIA Coordinator.

- i. Labor Costs – Search, Location, and Examination of Records. The labor costs of searching for, locating, and examining public records.
  1. This cost shall not exceed the hourly wage plus a fringe benefit multiplier of 50% of the hourly wage (but not to exceed the actual fringe benefit costs) of the lowest-paid employee capable of performing these tasks, regardless of whether that employee is available or who actually performs these tasks.
  2. This fee shall be charged in increments of 15 minutes or more. All partial time increments must be rounded down.
  3. Overtime wages shall not be included unless overtime is specifically stipulated by the requester.
- ii. Labor Costs – Redacting Records. The labor costs directly associated with separating and deleting exempt information from non-exempt information.
  1. Performed by Ottawa County Employee. If this task is performed by an employee, the cost shall not exceed the hourly wage plus a fringe benefit multiplier of 50% of the hourly wage (but not to exceed the actual fringe benefit costs) of the lowest-paid employee capable of performing these tasks in the particular instance, regardless of whether that person is available or who actually performs the tasks.
  2. Contracted Labor. If Ottawa County does not employ a person capable of separating and deleting exempt from non-exempt information in the particular instance as determined by the FOIA Coordinator on a case-by-case basis, it may treat necessary contracted labor costs in the same manner as employee labor costs, if it clearly notes the name of the contracted person or firm on the Fee Itemization Form. The total labor costs under this subsection for contracted labor shall not exceed an amount equal to six (6) times the state minimum hourly wage.
  3. Labor costs shall be estimated and charged in increments of 15 minutes or more. All partial time increments must be rounded down.
  4. Overtime wages for employees shall not be included unless overtime is specifically stipulated by the requester.
  5. Ottawa County shall not charge for the costs of redaction if it knows or has reason to know that it previously redacted the public record and the redacted version is still in Ottawa County's possession.

- b. Cost Components Applicable to All FOIA Requests. Ottawa County will charge for the actual cost of processing and fulfilling a FOIA request. The fee charged by Ottawa County shall not exceed the sum of the following components:
- i. Non-paper Physical Media.
    1. Non-paper physical media may be used in lieu of paper copies, and the requester may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies.
    2. If Ottawa County provides the public records on non-paper physical media, Ottawa County shall charge the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media.
    3. If Ottawa County does not have the technological capability necessary to provide the requested record on non-paper physical media, this subsection does not apply.
    4. In order to ensure the integrity and security of Ottawa County's technological infrastructure, Ottawa County will procure any requested non-paper physical media and will not accept non-paper physical media from the requestor.
  - ii. Paper Copies. The actual total incremental cost of necessary duplication or publication, not including labor.
    1. The total cost per sheet of paper and the number of sheets used shall be itemized.
    2. The fee shall not exceed \$0.10 per sheet of paper for copies made on 8 ½ by 11-inch paper or 8 ½ by 14 inch paper.
    3. The fee for other sized paper shall be charged at the actual total incremental cost.
    4. Ottawa County shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.
  - iii. Labor Costs – Duplication or Publication of Public Records. The cost of labor associated with duplication or publication of the public records, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media through the internet or other electronic means as stipulated by the requestor.

1. This cost shall not exceed the hourly wage plus a fringe benefit multiplier of 50% of the hourly wage (but not to exceed the actual fringe benefit costs) of the lowest-paid employee capable of performing these tasks, regardless of whether that person is available or who actually performs these tasks.
  2. This fee shall be charged in increments of 1 (one) minute. All partial time increments must be rounded down.
  3. Overtime wages shall not be included unless overtime is specifically stipulated by the requester.
- iv. Mailing. The actual cost of mailing the public records in a reasonably economical and justifiable manner.
1. Expedited shipping or insurance costs shall not be included unless specifically stipulated by the requester.
  2. Ottawa County may charge for the least expensive form of postal delivery confirmation.
- c. Public Records May Be Provided Without Charge or at Reduced Cost. A search for public records may be conducted or copies of public records may be furnished without charge or at a reduced charge if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public records can be considered as primarily benefiting the general public.
- d. Fee Waiver. A public record search shall be made and a copy of the public record shall be furnished without charge for the first \$20.00 of the fee for each request made that satisfies either of the following:
- i. Indigence.
    1. An individual who is entitled to information under FOIA and who submits an affidavit stating the individual is not requesting the information in conjunction with any outside parties who are offering the individual payment or other compensation for making the request, and:
      - A. Certifying the individual is indigent and receiving public assistance; OR
      - B. Stating facts showing inability to pay the cost because of indigency.
    2. If the requestor is eligible for this discount, it shall be noted on the Fee Itemization Form.
    3. If the requestor is ineligible for the discount, Ottawa County shall inform the requester specifically of the reason for ineligibility in

Ottawa County's written response. A requester is ineligible if the individual has previously received discounted copies of public records based on indigency from Ottawa County twice during that calendar year.

ii. Non-Profit Organization. A nonprofit organization formally designated by the state to carry out activities under Subtitle C of the 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:

1. Is made directly on behalf of the organization or its clients;
2. Is made for a reason wholly consistent with the mission and provisions of the above referenced statutes; AND
3. Is accompanied by documentation of its designation by the State.
4. If the requestor is eligible for this discount, it shall be noted on the Fee Itemization Form.

e. Fee Reduction for Untimely Responses. For each day Ottawa County exceeds the five business day response requirement, Ottawa County will reduce the labor costs charged by 5% per day up to a maximum 50% reduction, if:

- i. The late response was willful and intentional; OR
- ii. Written request included language requesting information within first 250 words of body of request or the envelope or subject line of the email, letter, or fax included the following words, characters or abbreviations, or recognizable misspellings: "Freedom of Information," "Information," "FOIA," "Copy."

f. Statutorily Determined Cost of Records. If a statute expressly provides for the sale of or fee for providing the requested public records the statute shall govern the cost and in such case the fees and costs provided herein, to the extent they conflict with the statute, shall not apply.

## X. DEPOSIT

a. Good Faith Deposit. If the FOIA Coordinator estimates that the costs associated with responding to a specific FOIA request will exceed \$50.00, the FOIA Coordinator may request a good faith deposit, not to exceed fifty-percent (50%) of the total cost, prior to compiling the public records.

- i. The response requesting the deposit must include a non-binding best efforts estimate regarding the time it will take to comply with the request, and a detailed estimate of cost for complying with the request using the Fee Itemization Form.

- b. Deposit Due to Unpaid Balance. If a requester has not paid in full for a previously completed request, the FOIA Coordinator may take the following actions:
  - i. Require a deposit of up to 100% of the estimated fee before it begins a full search for an subsequent request from the requester if:
    - 1. The final fee for the prior request was not more than 105% of the estimated fee;
    - 2. Records made available contained the information being sought in the prior written request and are still in public body's possession;
    - 3. Public records were made available to the requester subject to payment within the time frame estimate;
    - 4. 90 days have passed since notifying the requester the records were available;
    - 5. Requester is unable to show proof of prior payment to public body;  
AND
    - 6. Ottawa County provides a detailed itemization calculating the cost of the current request.
  - ii. The FOIA Coordinator shall no longer require a deposit under this subsection if:
    - 1. Individual can show proof of prior payment in full;
    - 2. Ottawa County is subsequently paid in full; or
    - 3. Three hundred sixty-five (365) days have passed since the written request for which full payment was not remitted.
- c. Best Efforts Time Estimate. All responses requiring a deposit shall also include a best efforts estimate of the time it will take to respond to the request. This estimate is not binding, but shall be provided in good faith.

## XI. FEE ITEMIZATION FORM

- a. Itemization. All fees, charges, fee waivers, fee reductions, and deposit requests must be individually itemized using the attached Fee Itemization Form.

## XII. PUBLIC RECORDS AVAILABLE ON WEBSITE

- a. Written Requests for Public Records Available on Website. There will be no charge for records which are available on Ottawa County's website if the FOIA Coordinator knows or has reason to know they are available on the website. Instead, the FOIA Coordinator will notify the requester in writing that all or a portion of the requested public records are available on the website. This notification will also provide the specific webpage address, to the degree practicable, of these public records and will include a detailed itemization of the estimated cost (using the Fee Itemization Form) to the requester if that person

chooses to have the documents provided in another format, such as paper format or non-paper physical media.

- i. If, after receiving the above referenced written notification and itemization, the requester requests the documents to be provided in another format, the requester shall be charged for the cost of providing these documents, which cost shall include the actual cost of fringe benefits of the lowest paid employee capable of providing the requested public records and shall not be subject to the 50% multiplier limitation.
- b. Verbal Requests for Information Available on Website. Any verbal request for information that an Ottawa County employee knows or has reason to know is available on the website shall be responded to where practicable by informing the requester about the website address.

### XIII. APPEALS

- a. Appealing a Denial of Public Records.
  - i. If Ottawa County makes a final determination to deny all or a portion of a request, the requester may:
    1. Submit a written appeal to the Chairperson of the Ottawa County Board of Commissioners, specifically stating the word “appeal” and the reasons for reversal; OR
    2. File a civil action in circuit court to compel disclosure. This action must be filed within 180 days after Ottawa County’s final determination to deny the request.
  - ii. If the requester appeals to the Chairperson of the Ottawa County Board of Commissioners, within ten (10) business days after receiving a written denial, the Chairperson of the Ottawa County Board of Commissioners shall do one of the following:
    1. Reverse the denial;
    2. Issue a written notice to the requester upholding the disclosure denial;
    3. Reverse the denial in part and issue a written notice to the requester upholding the denial in part; OR
    4. If either of the following apply, issue a notice extending for up to 10 business days, the period during which the Chairperson of the Ottawa County Board of Commissioners shall respond to the written appeal:

- A. The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request; or
  - B. The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.
- iii. The Ottawa County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled meeting of the Board of Commissioners.
- iv. Within 180 days after receiving a final determination from the Chairperson of the Ottawa County Board of Commissioners, the requester may commence a civil action.

**Ottawa County**  
**FOIA Fee Itemization Form**

**(Effective July 1, 2015)**

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

	<p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> <p style="text-align: right;">\$ _____ + _____ = \$ _____</p> <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment</p> <p style="text-align: right;">\$ _____ / 4 = \$ _____</p>	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> <p style="text-align: right;">_____ x \$ _____ = \$ _____</p>	\$ _____
<b>2. Contracted Labor Costs – Redaction*</b>	<p>If performed by Contracted Labor (Only permitted if Ottawa County does not employ a person capable of redacting the records as determined by the FOIA Coordinator):</p> <p>Name of person or firm contracted: _____</p> <p>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. \$8.15x6=\$48.90)</p> <p style="text-align: right;">\$ _____ per hour</p> <p>Divide the hourly rate by four (4) to determine the charge per fifteen (15) minute increment</p> <p style="text-align: right;">\$ _____ / 4 = \$ _____</p>	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> <p style="text-align: right;">_____ x \$ _____ = \$ _____</p>	\$ _____
<b>3. Non-Paper Physical Media</b>	<p>Actual and most reasonably economical cost of:</p> <p>Flash Drives \$ _____ x number used _____ = \$ _____</p> <p>Computer Discs \$ _____ x number used _____ = \$ _____</p> <p>Other Media \$ _____ x number used _____ = \$ _____</p>	\$ _____
<b>4. Paper Copies</b>	<p>Actual total incremental cost of duplication (not including labor) up to a <u>maximum of 10 cents per page</u>:</p> <p>Letter paper (8 ½” x 11”) number of sheets _____ x \$0.____ = \$ _____</p> <p>Legal paper (8 ½” x 14”) number of sheets _____ x \$0.____ = \$ _____</p> <p>Actual cost of other types of paper:</p> <p>Type of Paper: _____</p>	

	<p style="text-align: center;">number of sheets ____ x \$ _____ = \$ _____</p> <p>Type of Paper: _____</p> <p style="text-align: center;">number of sheets ____ x \$ _____ = \$ _____</p> <p>(NOTE: Must print double-sided if available and costs less.)</p>	\$ _____
<b>5. Labor Cost – Duplication Copying, and transferring records to non-paper physical media</b>	<p>Enter the hourly wage of lowest paid employee capable of performing the duplication, copying, or transferring digital records to non-paper physical media</p> <p style="text-align: right;">\$ _____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost)</p> <p style="text-align: right;">_____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier</p> <p style="text-align: right;">\$ _____ x 1. _____ = \$ _____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> <p style="text-align: right;">\$ _____ + _____ = \$ _____</p> <p>Divide the resulting hourly wage by _____ to determine the charge per _____ (____) minute increment</p> <p style="text-align: right;">\$ _____ / 4 = \$ _____</p> <p>(NOTE: May use any time increment for this category)</p>	
	<p>Number of ____ minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> <p style="text-align: right;">_____ x \$ _____ = \$ _____</p>	\$ _____
<b>6. Mailing</b>	<p>Actual cost of mailing records in a reasonable and economical manner:</p> <p style="text-align: right;">Cost of mailing: \$ _____</p> <p>Cost of least expensive form of postal delivery confirmation:</p> <p style="text-align: right;">\$ _____</p> <p>Cost of expedited shipping or insurance only if specifically stipulated by the requestor:</p> <p style="text-align: right;">\$ _____</p>	\$ _____
	<b>Subtotal</b>	\$ _____
<b>Waivers and Reductions</b>	<p>Subtract any Fee Waiver or Reduction:</p> <p>\$20.00 for indigency or nonprofit organization as further described in the Public Body’s procedures and guidelines.</p>	

	Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$_____	
	The reduction amount due to the late response of the Public Body. 5% of fee x ____ days late = _____% reduction (maximum reduction is 50%)	-\$_____
<b>Deposit</b>	Subtract any good-faith deposit received: \$_____	-\$_____
	<b>Total Due</b>	\$_____

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

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

EXHIBIT "C"

**Ottawa County**  
**Freedom of Information Act Processing**

**Public Summary**

As provided in Section 1 of the Michigan Freedom of Information Act, "It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process."<sup>1</sup> To that end, all people, excluding prisoners, are allowed to file FOIA requests with a Public Body. Ottawa County and its constituent departments, offices, and agencies is a Public Body under the terms of the Freedom of Information Act. The designated Freedom of Information Act Coordinator for Ottawa County is:

Gregory J. Rappleye  
Freedom of Information Act Coordinator  
Ottawa County Corporation Counsel's Office  
12220 Fillmore St.  
West Olive, MI 49460  
Phone: 616-738-4861  
Fax: 616-738-4888  
Email: [grappleye@miottawa.org](mailto:grappleye@miottawa.org)

PLEASE NOTE: To facilitate the processing of requests for public records, it is strongly suggested that persons who are making a Freedom of Information Act request regarding the operations of the Ottawa County Sheriff's Office (accident reports, criminal investigative reports, and other similar matters) submit their written FOIA requests directly to:

Scott Brovont  
Records Division  
Ottawa County Sheriff's Office  
12220 Fillmore Street  
West Olive, MI 49460  
Phone: 616-738-4025  
Fax: 616-738-4062  
Email: [foia.sheriff@miottawa.org](mailto:foia.sheriff@miottawa.org)

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<sup>1</sup> MCL 15.231

A requester must simply file a request in writing with the Freedom of Information Act Coordinator, and the Ottawa County will begin processing his or her request.<sup>2</sup> Ottawa County, in its initial response, will do one of the following within the timeframe permitted by the statute: provide the requested documents, provide some of the requested documents while withholding others, withhold all of the requested documents, inform the requester that additional time is needed, require a fee deposit prior to further processing, or inform the requester that the requested record has not been sufficiently described.

If a request is denied or partially denied, Ottawa County will explain why the documents have not been released and inform the requester of his or her challenge and appeal options. A fee deposit will be required when processing a request will require significant Ottawa County employee time and resources. Ottawa County will notify the requester of the estimated cost and provide a non-binding, best efforts estimate of the time it will take to complete the processing of the request. It is possible that after further processing of the request, Ottawa County will determine that the cost of processing the request is significantly less or greater than the estimated cost. If that is the case, Ottawa County will notify the requester. After Ottawa County receives the required deposit, it will make every effort to provide the requested documents within the time estimate provided.

Requesters must understand, however, that at any given time, Ottawa County is processing multiple requests and cannot devote all of its time to one particular request. If a requester feels that he or she was wrongly denied responsive documents, he or she may appeal to the Chairperson of the Ottawa County Board of Commissioners or file a civil action in the Ottawa County Circuit Court. Requesters are also always free to contact the FOIA Coordinator's Office with any questions about the processing of their requests. Detailed Procedures and Guidelines follow.

## **Procedures and Guidelines**

### **1. How to submit a FOIA request to Ottawa County**

- a. A FOIA request must be submitted in writing to the FOIA Coordinator. The request may be transmitted in hard copy, by email, or by facsimile.

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<sup>2</sup> Verbal requests for information are not FOIA requests for purposes of these Procedures and Guidelines. If a verbal request for information is received by an Ottawa County employee who knows that the information is available on the Public Body's website, the employee, where practicable, will inform the requester about Ottawa County's website address.

- b. A request should describe the record(s) sought sufficiently to enable Ottawa County to find the record(s) and should provide the requester's contact information.
- c. Requests should state that they are submitted pursuant to the Michigan Freedom of Information Act.
- d. Requests received electronically are deemed received the next business day. A business day is defined as Monday through Friday, exclusive of holidays and institutional closure days.
- e. If a request is delivered to the FOIA Coordinator's junk mail folder, the request will be deemed received one business day after the Coordinator becomes aware of the request. The FOIA Coordinator will check the junk mail folder at least once every fourteen (14) days.

## **2. Responses to FOIA requests to Ottawa County**

- a. Ottawa County will respond to a FOIA request within 5 business days of the FOIA Coordinator receiving the request.
- b. A response will consist of one or more of the following:
  - i. A release of all of the requested records
  - ii. A partial release of the requested records, and a partial denial (if some or a portion of the records do not exist, are not in the possession of Ottawa County, and/or are exempt from disclosure)
  - iii. A complete denial of records (if all of the records do not exist, are not in the possession of Ottawa County, and/or are exempt from disclosure)
  - iv. A notice that more time is needed to process the request
    - 1. If more time is needed, Ottawa County will send out a follow up response within 10 business days of the initial response.
  - v. A notice that a fee deposit is required prior to further processing
    - 1. If a fee deposit is required, Ottawa County will include in its response a non-binding, best efforts estimate regarding the time it will take to provide the records to the requester.
  - vi. A notice that the record(s) sought has (have) not been sufficiently described to enable Ottawa County to locate the record(s).

- c. The response will state the FOIA exemptions under which any information and/or documents are withheld, if applicable.
- d. If there is a denial of records for any reason, the response will set forth the procedures for challenge and/or appeal.

### **3. Deposit Requirements**

- a. A fee deposit will be required when the processing of a request will result in fees equal to or greater than \$50.00.<sup>3</sup>
- b. The required deposit will equal up to 50% of the estimated cost of fulfilling the request as calculated at the time of the initial response.
- c. If Ottawa County requires a deposit, it will not process the FOIA request further until the deposit is paid.
- d. If, after receipt of the deposit and further processing of the request, Ottawa County learns that the processing costs will be significantly different from the estimated costs, Ottawa County will so notify the requester. Where the actual effort to search for, review and separate exempt material significantly exceeds the original estimate, Ottawa County will notify the requester. The requester may choose to receive a revised fee deposit request, or limit his/her original request to those records which may be processed within the time stated in the original fee estimate.
- e. A person who makes a FOIA request for which a deposit is required may withdraw that FOIA request without charge instead of paying the required deposit.
- f. Ottawa County will treat multiple concurrent FOIA requests on the same topic(s) and/or regarding the same recordkeeper(s) and from the same person as one FOIA request for purposes of determining whether the fee is below \$50.00.
- g. In certain circumstances where a requester has not paid the remainder of the fee for processing an earlier request, Ottawa County may require 100% of the estimated fees for processing a subsequent request prior to processing the subsequent request.

### **4. Calculation of Fees**

- a. Fees are calculated by adding together the following costs<sup>4</sup>:

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<sup>3</sup> Ottawa County has determined, consistent with FOIA, that failure to charge fees in situations where the fees would be equal to or greater than \$50.00 would result in unreasonably high costs to Ottawa County.

- i. The labor costs<sup>5</sup> for searching for, locating, and examining responsive records
  - ii. The labor costs<sup>5</sup> for review, separation, and deletion of exempt information from non-exempt information
  - iii. The cost of non-paper physical media, if used
  - iv. The cost per copy of paper copies, not to exceed \$.10/page for standard 8 ½ x 11 inch paper
  - v. The labor costs<sup>5</sup> directly associated with duplication or publication, which may include copying to non-paper media
  - vi. The cost of mailing
- b. Final fees for responding to a FOIA request will be billed when Ottawa County responds to the FOIA request. An invoice will be provided by Ottawa County with the response. The amount invoiced must be paid within thirty days.
- c. Ottawa County reserves the right to require payment in full of all fees incurred in processing a FOIA request before delivering the final, responsive documents.
- d. Ottawa County's decision to deny access to public records sought by a FOIA request because those records are, in whole or in part, exempt from disclosure does not excuse the person who files that FOIA request from payment of fees for the work undertaken by Ottawa County in response to that request.
- e. Ottawa County may waive or reduce the fees it is authorized to charge if it determines that a waiver or reduction of the fee is in the public interest because responding to the FOIA request should be considered as primarily benefiting the general public.
- f. Fee reductions or waivers are required in certain instances involving proven indigence or non-profit organizations. Ottawa County will apply these reductions or waivers in accordance with the statute.

## **5. Procedures for Challenge and**

- a. If Ottawa County denies a request in whole or in part, the requester may:

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<sup>4</sup> A copy of the standard form that Ottawa County uses for fee itemization, with additional explanatory information, is attached to the Procedures and Guidelines.

<sup>5</sup> Labor costs will be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. The labor is charged at the hourly rate of the lowest paid Ottawa County employee capable of doing the work, plus fringe benefits, if applicable. If it is not possible for the work to be done by an Ottawa County employee, Ottawa County will contract the work out and charge per the provisions of the statute.

- i. Submit an appeal to the Chairperson of the Ottawa County Board of Commissioners, in writing, via the FOIA Coordinator, using the contact information listed in Item 1, above. The appeal must specifically use the word “appeal” and identify the reason(s) the requester seeks reversal of the denial. The Chairperson of the Ottawa County Board of Commissioners must respond to the appeal within 10 business days by doing one of the following:
    1. Reversing the FOIA Coordinator’s decision
    2. Upholding the FOIA Coordinator’s decision
    3. Reversing in part and upholding in part the FOIA Coordinator’s decision
    4. Issuing a notice of extension for not more than 10 additional business days.
  - ii. Commence a civil action in the Ottawa County Circuit Court within 180 days after the Public Body’s final determination to deny a request.
- b. If a requester has questions regarding any FOIA response, including estimated fees or actual fees assessed, the requester should not hesitate to contact the FOIA Coordinator by email ([grappleye@miottawa.org](mailto:grappleye@miottawa.org)) or telephone (616) 738-4861.