

**TOWNSHIP OF BARRY
COUNTY OF BARRY**

FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

Preamble: Statement of Principles

It is the policy of Barry Township ("Township") that all persons, except those who are serving a sentence of imprisonment, consistent with the Michigan Freedom of Information Act ("FOIA"), 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 employees. The people shall be informed so that they fully participate in the democratic process.

The Township's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Township acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Township acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The Township will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Township's policy is to disclose public records consistent with and in compliance with State law.

Section 1: General Policies

The Township Board acting pursuant to the authority at MCL 15.236 designates the Township Supervisor as the FOIA Coordinator. The Supervisor is authorized to designate other Township staff to act on behalf of the Supervisor to accept and process written requests for the Township's public records and approve denials.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a Township 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 note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator or FOIA Coordinator Designee became aware of the request. The Coordinator or designee locating the request also should be identified.

The FOIA Coordinator shall review Township spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA coordinator shall work with Township Information Technology personnel and contractors to develop administrative

rules for handling spam and junk-mail so as to protect Township systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The Township is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other Township staff is 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 received by the Township on file for a period of at least one year.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Township shall do so in writing. The request must sufficiently describe a public record so as to enable Township personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However, the FOIA Coordinator will make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail to the FOIA Coordinator at 155 E. Orchard Street, Delton, MI 49046. Requests may also be submitted electronically by facsimile at (269) 623-8171 and e-mail at barrytownship@mei.net. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided to him or her in lieu of paper copies. The Township will comply with the request only if it possesses 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 the Township on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the Township's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address. Any verbal request may be documented by the FOIA Coordinator or Designee on the Township's FOIA Request Form.

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, within 5 business days of receipt of a FOIA request, the Township will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The Township will respond to the 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 the Township needs an additional 10 business days to respond. 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.

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. A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its written Public Summary are maintained on the Township's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained.

If, based on a good faith calculation by the Township, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not been fully paid for a previously granted request, the Township will require a good-faith deposit 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 the Township to process the request and also provide a best efforts estimate of a time frame it will take the Township to provide the records to the requestor. The best efforts estimate shall be nonbinding on the Township, 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 Section 1 of the FOIA.

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 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 submit an appeal of the denial to either the Township Board or seek judicial review in the County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court; and
- The notice of Denial shall be signed by the FOIA Coordinator or the Coordinator's designee(s).

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.

The Township shall 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 Township records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Township operations

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 by the Township, the requestor will 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 fully paid the Township for copies of public records made in fulfillment of a previously granted written 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 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 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;
- 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 unable 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
- 365 days have passed since the person made the request for which full payment was not remitted to the Township.

Section 5: Calculation of Fees

A fee will not be charged for the 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 in the particular instance, and the Township specifically identifies the nature of the unreasonably high costs.

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

- The particular request incurs costs greater than incurred from the typical or usual request received by the Township.¹
- 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 public records from more than one Township department or various Township offices is 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.

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

¹ See *Bloch v Davison Community Schools*, 2011 Mich App Lexis 771, 2011 WL 1564645

- Labor costs directly associated with searching for, locating and examining a requested public record;
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed;
- The actual cost of computer discs, computer tapes or other digital or similar media;
- The cost of duplication or publication, not including labor, of paper copies of public records;
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public record to non-paper physical media or through the Internet or other Electronic means;
- The actual cost of mailing or sending a public record.

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.²
- 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.³
- 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 until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

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.
- In order to ensure the integrity and security of the Township's technological infrastructure, the Township will procure any requested non-paper media and will not accept non-paper media from the requestor.

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

² The cost of labor directly associated with duplication, publication or transferring records to non-paper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down.

³ If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of person or firm who does the work and the total labor cost may not exceed an amount 6 times the current state minimum hourly wage.