

Procedures and Standards for: *Freedom of Information Act*
Policy Reference: *Administrative Policy - Freedom of Information Act*
Implementing Entity: *County Administrator's Office*
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County of Kent

Procedures and Standards – Freedom of Information Act

- I. PURPOSE:** These procedures and standards have been developed by the County Administrator's Office to implement an Administrative Policy on Michigan Freedom of Information Act compliance adopted by the Board of Commissioners.
- II. DEFINITIONS:**
- A. FOIA:** The Michigan Freedom of Information Act, codified at MCLA 15.321 et seq.
- B. FOIA Coordinator:** The County Administrator/Controller, County Corporate Counsel, and other individuals that he/she designates to act on his/her behalf.
- C. Public Body:** "Public Body" shall include, but not be limited to, the following:
- C.1 Departments:** Kent County departments including the Administrator's Office, Fiscal Services/Purchasing, Property Description and Mapping, Human Resources, Information Technology, Facilities Management, Bureau of Equalization, Health, Public Works, Aeronautics, Parks, and Zoo.
- C.2 Elected Officers:** Kent County elected officers including the County Clerk/Register of Deeds, Treasurer's Office, Sheriff's Office, Prosecuting Attorney's Office, and Drain Commissioner's Office.
- C.2.a. Exception:** County Clerk and Clerk's employees when acting as clerks of the Circuit Court do not represent a Public Body.
- D. Public Record:** A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Exception: computer software.
- E. Redaction:** Editing of a public record by deletion, masking or separation to remove exempt material from nonexempt material.
- F. Requesting Person:** An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity.
- G. Writing:** The written word, a photocopy, photograph, map, microfilm, sound, symbol, computer file, e-mail or digitally scanned image.

III. STANDARDS:

A. FOIA Coordinators:

Designation: The County Administrator/Controller, as chief County FOIA Coordinator, may designate other individuals to act on his/her behalf, and may amend such designations at his/her discretion.

Appointment: The County Administrator/Controller appoints the County Corporate Counsel as Chief Administrative FOIA Coordinator. The following Kent County officers, officials or employees shall be trained to serve as Departmental FOIA Coordinators:

- Sheriff, Undersheriff, and their designees
- A.2.b. Prosecuting Attorney
- A.2.c. County Clerk/Register of Deeds
- A.2.d. Treasurer
- A.2.e. Drain Commissioner
- A.2.f. Fiscal Services Director
- A.2.g. Human Resources Director
- A.2.h. Human Resources Managers
- A.2.i. Labor Counsel
- A.2.j. Purchasing Manager
- A.2.k. Deputy Director of Support Services
- A.2.l. Information Technology Director
- A.2.m. Facilities Management Director
- A.2.n. Equalization Director
- A.2.o. Administrative Health Officer
- A.2.p. Public Health Enforcement Officer
- A.2.q. Department of Public Works Director
- A.2.r. Department of Aeronautics Finance Division Director
- A.2.s. Parks Director
- A.2.t. Zoo Director
- A.2.u. Housing and Community Development Director

Responsibilities: A FOIA Coordinator shall be responsible for accepting and processing requests for the Public Body's public records, and shall be responsible for granting or denying public records where appropriate.

- A.4. Training:** A FOIA Coordinator shall receive training in the application of FOIA and the use of the required form packet, and shall be advised of amendments to FOIA as necessary. A FOIA Coordinator shall seek the advice of County Corporate Counsel, or the Public Body's retained counsel where appropriate, when questions of legal interpretation arise.
- A.5. Form Packet:** A FOIA Coordinator shall use the Michigan FOIA Response Form, Notice of Right to Appeal and Affidavit of Indigence contained in the required form packet, attached hereto and incorporated by reference herein, to respond to requests.
- A.6. Filed Requests:** A FOIA Coordinator shall keep all FOIA requests, responses and appeals on file for no less than one (1) year from the date of final response or written decision on appeal, whichever is later.
- A.7. Monitoring:** A FOIA Coordinator shall ensure that any FOIA requests he/she may receive by electronic device or system are monitored and responded to by a responsible person when the FOIA Coordinator will not have access to said device or system for more than one (1) business day.

PROCEDURES:

- A. Receive Request:** The requesting person shall provide the Public Body with a written request that describes a public record sufficiently to enable the Public Body's FOIA Coordinator to find it. The written request may be transmitted by facsimile, electronic mail or other electronic means, but if it is transmitted by such means, it will be considered received by the Public Body one (1) business day after the transmission is made.
- B. Forward Request to FOIA Coordinators:** All County officers and employees who receive a FOIA request shall note the date of receipt on the request and forward it within one (1) business day to the FOIA Coordinator for the department or agency where the records are kept. If a County officer or employee is unable to determine where to direct the request, it shall be submitted to County Corporate Counsel within one (1) business day of receipt.
- C. Review Request:** After receiving a request and within sufficient time to ensure compliance with FOIA response requirements, a FOIA Coordinator shall:

Determine if there is an existing public record that satisfies the request.

C.2. Determine if any requested records, in whole or in part, are subject to denial or exempt from disclosure. A requested record which is subject to denial or exempt from disclosure, in whole or in part, shall not be disclosed unless approved by County Corporate Counsel.

D. Determine if Request Contains Grounds for Denial:

A FOIA request shall be denied if the requesting person is serving a sentence of imprisonment in a local, state or federal correctional facility.

A FOIA request shall be denied if the requesting person does not describe a public record sufficiently to enable the Public Body to find it.

A FOIA request shall be denied if it requires the Public Body to create a new public record or make a compilation, summary or report of information.

E. Examine Request for Exemptions: The following public records are exempt from disclosure, unless they are otherwise required to be made available to the public, or to a party in a contested case under the Administrative Procedures Act (MLCA 24.201 et seq., Public Act 306 of 1969). Any questions concerning the general legal parameters of an exemption, or applicability in a particular situation, should be directed to County Corporate Counsel or to the Public Body's retained counsel.

E.1 Privacy: Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of an individual's privacy.

Social Security Numbers: Records disclosing the social security number of an individual.

Privileged Information: Information subject to the attorney-client, physician-patient, psychologist-patient or religious practitioner privileges.

Communications Within and Between Public Bodies: Communications and notes of an advisory nature within a Public Body or between Public Bodies if:

The communications cover other than purely factual materials and the opinion cannot be redacted.

The communications are preliminary to a final agency determination of policy or action.

The Public Body shows that the public interest in encouraging frank communications between public officials and employees clearly outweighs the public interest in disclosure.

Another Public Body's Exempt Material: Information in the possession of a Public Body received from another Public Body in the course of business, which would be exempt from disclosure if requested of the originating Public Body.

Appraisals: Appraisals of real property, but only until a contract is entered into or three (3) years have elapsed since the appraisal was made.

Employment Tests: Test questions/answers, scoring keys, other examination instruments or data used to administer a license or evaluate persons for employment with a Public Body, unless the public interest in disclosure outweighs the public interest in nondisclosure.

Medical/Psychological Data: Medical, counseling or psychological facts/evaluations, if the individual's identity would be revealed by disclosure, including protected health information, as defined in 45 CFR160.103.

Bids/Proposals: A bid or proposal, but only prior to public opening, or if no public opening, until expiration of the submission deadline.

Product Testing: Testing data developed by a Public Body to determine whether bidders' products meet specifications. Exemption does not apply after one (1) year from the date the Public Body completes the testing.

Trade Secrets/Financial Information: Trade secrets or commercial or financial information voluntarily provided to a Public Body for use in developing government policy if (a) the Public Body has promised to keep the information confidential, (b) the promise is authorized by the County Administrator/Controller or elected official at the time made, and (c) a general description of the information is recorded by the Public Body within a reasonable period of time after it is submitted, kept in a central location within the Public Body, and made available to a requesting person.

Exception: This exemption does not apply to information required to be submitted to a Public Body by law, or as a condition of receiving a government contract, license or other benefit.

Security: Records of a Public Body's security measures, plans, codes, combinations, passwords, passes, and keys.

E.12.a. Records concerning safety or security measures related to public or private persons or property, including building, public works, and public water supply designs related to ongoing security measures of a public body, plans and capabilities for responding to violations of the Michigan Anti-Terrorism Act, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would

not impair the public body's ability to protect the safety or security of persons or property, or unless public interest in disclosure outweighs public interest in nondisclosure.

Civil Actions: Records relating to a civil action in which the requesting person and Public Body are parties.

Lockup Security: Information that would prejudice a Public Body's ability to maintain physical security of custodial or penal institutions, unless public interest in disclosure outweighs public interest in nondisclosure.

Law Enforcement: The following information is exempt:

Investigative records compiled for law enforcement purposes, but only to the extent that disclosure would (i) interfere with law enforcement proceedings, (ii) deprive a person of the right to a fair trial, (iii) constitute an unwarranted invasion of personal privacy, (iv) identify a confidential source in a criminal investigation or disclose his/her information, (v) disclose law enforcement investigative techniques/procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

E.15.b. Records of law enforcement communication codes or plans for deployment, unless the public interest in disclosure outweighs the public interest in nondisclosure.

Public records of a law enforcement agency which would do any of the following, unless the public interest in disclosure outweighs the public interest in nondisclosure:

- Identify or provide means to identify an officer, undercover or plainclothes officer, or informant.
- Disclose an officer's personal address/telephone number, special skills, name/address/telephone number of family members, relatives, children or parents.
- Disclose operational instructions for officers.
- Disclose contents of staff manuals.
- Endanger the life or safety of officers or their families, relatives, children, parents or informers.
- Disclose personnel records of law enforcement agencies.

- Identify or provide means of identifying residences that law enforcement agencies are requested to check in the absence of the owner/lessee.

E.16. Archaeological Sites: Information that would reveal the exact location of archaeological sites.

E.17. Other Exemptions: Information specifically exempted by statute, including but not limited to:

E.17.a. Deliberative information contained in the minutes of a Public Body's closed session.

E.17.b. Report and recommendations of a legislative corrections ombudsman or a children's ombudsman.

E.17.c Crime victim's file and testimony before the Crime Victims Compensation Commission; crime victim's address and telephone number maintained by a law enforcement agency.

E.17.d. Certain information under the Firearms Act contained in an order or disposition filed with the State Police.

E.17.e. Information maintained by a fire chief on quantity and location of hazardous chemicals.

E.17.f. Information contained in voter registration records identifying the office that received a voting application, an individual's declination to register, or a registered voter's driver license or state personal identification number, date of birth or telephone number.

E.17.g. Affidavits in the possession of the register of deeds stating the value of real estate, and any associated receipts.

E.17.h. Information on HIV infection, except for certain statistical data.

E.17.i. Information concerning the injury and benefits of a Worker's Disability Compensation claimant, except for statistical data.

E.17.j. Detailed description and value of lost property in the possession of a law enforcement agency.

E.17.k. Home addresses, telephone numbers, personnel records of employees of the Department of Corrections or a forensic psychiatry center or psychiatric hospital that houses prisoners.

- F. Respond to Request:** The FOIA Coordinator shall respond to a request, using the required form packet, within five (5) business days from the date upon which he/she receives the request, unless otherwise agreed to in writing by the requesting person.
- G. Process Response:** If the requested record is not subject to one of the grounds for denial or an exemption, it shall be processed in the following manner:
- G.1. Response Options:** Within five (5) business days, unless otherwise agreed to in writing by the requesting person, the FOIA Coordinator shall do one of the following:
- G.1.a.** Grant the request.
 - G.1.b.** Deny the request and provide the reason why the request is subject to denial or exempt.
 - Grant the request in part and deny the request in part.
 - G.1.d.** Using FOIA response form, provide notice extending for not more than ten (10) business days the time in which the Public Body shall respond to the request. The notice shall contain the reasons for the extension and the date by which the Public Body will respond to the request. Not more than one (1) notice of extension shall be issued for a particular reason.

Response Format: The requesting person shall be provided with the opportunity to inspect, copy or receive copies of the requested public record. The FOIA Coordinator of a Public Body that provides certified copies in the normal course of its business shall furnish a certified copy of the record upon written request.

Subscription: Upon written request, the FOIA Coordinator shall provide the requesting person with a six-month renewable subscription to future issuances of a public record which is created, issued or disseminated on a regular basis. The requesting person must make a written request to renew the subscription for any additional period of six months.

Inspection: The Public Body shall provide the requesting person with a reasonable opportunity and facilities to inspect requested records. The Public Body may make reasonable rules necessary to protect public records from loss, unauthorized alteration, mutilation or destruction, and prevent unreasonable interference with the performance of its functions.

Redaction: If a public record contains both exempt and nonexempt material, the FOIA Coordinator shall edit the record by deletion, masking or separation of

the exempt from the nonexempt material, and shall then provide the nonexempt material to the requesting person. The FOIA Coordinator shall generally describe the redacted material, unless the description would reveal its contents.

H. Fees for Public Records:

H.1. Permissible Fees: The Public Body may charge a fee for copying public records for the requesting person or to enable inspection. A fee may be charged for search, examination, review or redaction of public records, but only if failure to charge a fee would result in unreasonably high costs specifically identified by the Public Body. Collected fees shall be credited to the Public Body that incurred the cost of processing the request.

Calculation of Fees: A fee shall be the sum of the actual mailing cost and the actual incremental cost of duplication including labor. Labor is calculated at no more than the hourly wage of the lowest paid employee of the Public Body capable of retrieving the record. Actual mailing cost shall be the cost of mailing requested records at the current first-class rate. Within sixty (60) days of the implementation of these Procedures, each FOIA Coordinator listed above shall submit to the Administrator's Office a fee schedule providing the actual cost of duplication based upon use of equipment and materials, and the job title and hourly wage of its lowest paid employee capable of retrieving the file. In accordance with the Kent County Fiscal Policy – Fees and Charges, the FOIA Coordinator shall annually review the Public Body's fee schedule, make any necessary changes based upon projected costs, and submit the schedule to County Administrator/Controller along with the Public Body's annual budget.

Deposit: If the total fee exceeds \$50.00, the Public Body may require a deposit of not more than one-half of the fee.

Fee Payment Enforcement: Once copies of the requested records have been made, the Public Body is authorized to require payment of fees in full before it delivers the records to the requesting person.

H.4.a. Exception: If a deposit is required, the Public Body may refuse to process the request until the deposit is paid.

Exceptions to Fee Procedure:

Public records may be provided without charge or at reduced charge if the Public Body determines that the record primarily benefits the general public, and it is in the public interest to provide it without charge or at reduced charge.

The first \$20.00 of the total fee for requested records shall be waived if the requesting person submits an Affidavit of Indigence (contained in the required form packet).

H.5.c. A fee shall not be charged for public records which are available for sale to the public or for which a specific fee is authorized by another act or statute.

Appeal:

Requesting Person's Right to Appeal: A requesting person has the right to appeal the denial of a request for public records. He/she may submit an appeal to the head of the Public Body that denied his/her request. The appeal must contain the word "appeal" and provide the reasons why denial of the request should be reversed (or, the requesting person may skip the administrative appeal and appeal directly to the Circuit Court).

Receipt of Appeal to Public Body: If the head of the Public Body is a governing board or commission, the appeal shall not be considered received until the board or commission's first regularly scheduled meeting following receipt.

Public Body's Response to Appeal: Within ten (10) business days after receiving a written appeal, the head of the Public Body shall do one of the following using the required forms packet:

I.3.a. Reverse the denial.

Uphold the denial.

Reverse the denial in part and uphold the denial in part.

Under unusual circumstances, extend for not more than ten (10) business days the time in which the head of the Public Body shall respond to the appeal. Unusual circumstances are any one or more of the following: (i) the need to search for, collect or appropriately examine or review a voluminous amount of separate and distinct public records for a single request, (ii) the need to collect the requested public records from numerous field offices, facilities or other establishments which are located apart from the office of the Public Body. Not more than one (1) notice of extension shall be issued for a particular request.

Requesting Person's Rights on Denial of Appeal: The requesting person has 180 days from the date of the Public Body's final written denial to file an appeal in the Circuit Court. If the Court reverses the Public Body's decision, it will order the Public Body to provide the record and award the requesting person

reasonable attorney fees, costs, and disbursements. If the Court finds that the Public Body violated the FOIA by arbitrarily and capriciously denying or delaying the request, it will award the requesting person \$500.00 in punitive damages. All costs will be assessed against the Public Body.

DISTRIBUTION: These procedures and standards shall be distributed upon adoption by the County Administrator/Controller to all County departments and agencies.

PERIODIC REVIEW: These procedures and standards shall be reviewed at least every two years by the County Administrator/Controller or his/her designee, and shall be amended as needed to ensure their continuing accuracy and value to the County.