

CHARTER TOWNSHIP OF COMMERCE
Michigan Freedom of Information Act
Procedures and Guidelines

Preamble: Statement of Principles

These procedures and guidelines are intended to implement the state's Freedom of Information Act, Public Act 442 of 1976, as amended (MCL 15.231 *et seq.*) (FOIA).

It is the policy of the township that all persons, except those incarcerated 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.

The township board has established the following written procedures and guidelines to implement the FOIA and has created a written public summary of the specific procedures and guidelines to assist the general public regarding how to submit written requests for information and explaining how to understand the township's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal.

Section 1: General Policies

The township clerk is designated as the FOIA coordinator. The clerk is authorized to designate other township staff to act on his or her behalf 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 email, the request is deemed to have been received on the following business day. If a request is sent by email 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 became aware of the request.

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

staff 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, in his or her discretion, 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.

Upon request by visitors to the township offices and in response to written requests for information the township shall provide a copy of these Procedures and Guidelines and the written Public Summary to the public without charge. No deposits or charge fees otherwise permitted under the FOIA shall be required until the township is in compliance with this requirement.

These Procedures and Guidelines and the township's written Public Summary shall be maintained on the township's website at <http://commercetwp.com/departments/clerks-department/clerks-foia>. A link to those documents may be provided instead of providing paper copies of those documents.

Section 2: Requesting a Public Record

A request for a public record need not be made on a specific form; however, the FOIA coordinator may make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the township may be submitted on the township's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.

Verbal requests for records may be documented by the township on the township's FOIA Request Form.

If a person 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, the requesting person shall be informed of the pertinent website address.

A request must sufficiently describe a public record so as to enable township personnel to identify and find the requested public record.

A request from a person, other than an individual who qualifies as indigent under Section 2-364(g)(1) of the Commerce Charter Township Code, must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address.

Written requests for public records may be submitted in person or by mail to any township office. Requests may also be submitted electronically by facsimile (fax) and electronic mail (email). 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, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The township shall 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 township on a regular basis. A subscription is valid for up to six (6) months and may be renewed by the subscriber.

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 shall deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the township shall issue a response within five (5) business days of receipt of a FOIA request.

The township shall respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the township needs an additional ten (10) business days to respond for a total of no more than fifteen (15) business days from the date the request is deemed received. 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.

When a request is granted:

If the request is granted, or granted in part, the FOIA coordinator shall 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 and the written Public Summary shall be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the written Public Summary are maintained on the township's website at <http://commercetwp.com/departments/clerks-department/clerks-foia>, a link to these Procedures and Guidelines and the written Public Summary may be provided instead of providing paper copies of those documents.

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

If the cost of processing a FOIA request is expected to exceed \$50.00 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the township may require a good-faith deposit pursuant to Section 4 of this policy before processing the request.

In making the request for a good-faith deposit the FOIA coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by 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. It shall be made in good faith and shall 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.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA coordinator shall 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 office of the township FOIA coordinator or seek judicial review in the Oakland County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.

The Notice of Denial shall be signed by the FOIA coordinator.

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

Requests to inspect public records:

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.

Requests for certified copies:

The FOIA coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

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

If a request for public records is from a person who has not paid the township in full for copies of public records made in fulfillment of a previously granted written request, the FOIA coordinator shall require a deposit of one hundred (100%) percent of the estimated processing fee before beginning to search for a public record for the current written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than one hundred five (105%) percent of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the township's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the township to provide the records;
- Ninety (90) days have passed since the FOIA coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the township; and
- The FOIA coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA coordinator shall not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the township;
- The township is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the township.

If a deposit that is required under Section 2-364(d) of the Commerce Charter Township Code is not received by the township within forty-five (45) days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount pursuant to Section 2-364(i) of the Commerce Charter Township Code, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. Notice of a deposit requirement under Section 2-364(d) of the Commerce Charter Township Code is considered received three days after it is sent, regardless of the means of transmission. Notice of a deposit requirement

under Section 2-364(d) of the Commerce Charter Township Code must include notice of the date by which the deposit must be received, which date is forty-eight (48) days after the date the notice is sent.

Section 5: Calculation of Fees

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

A fee shall not be charged for the labor cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the township because of the nature of the request in the particular instance, and the township specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination, review, and deletion and separation of exempt from non-exempt information are “unreasonably high” when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the township’s usual FOIA requests, not compared to the township’s operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011).

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

- Volume of the public record requested.
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one township department or whether various township offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA coordinator in responding to the particular request.

The Michigan FOIA statute permits the township to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating, and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the township.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the township.

- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the township's website if the township is asked to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the township's website if the township is asked to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs shall be calculated based on the following requirements:

- All labor costs will be estimated and charged in fifteen (15) minute increments, with all partial time increments rounded down. If the time involved is fewer than fifteen (15) minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid township employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The township may add up to fifty (50%) percent to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of six times the state minimum hourly wage at the time the request is made.

The cost to provide records on non-paper physical media when so requested shall be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the township has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The township will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the township's technology infrastructure.

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

- Paper copies of public records made on standard letter (8 ½ x 11-inch) or legal (8 ½ x 14-inch) sized paper will not exceed ten cents (\$.10) per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The township will provide records using double-sided printing, if it is cost-saving and available.

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

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

If the FOIA coordinator does not respond to a written request in a timely manner, the township shall:

- Reduce the labor costs by five (5%) percent for each day the township exceeds the time permitted under FOIA up to a fifty (50%) percent maximum reduction, if any of the following applies:
 - The township’s late response was willful and intentional,
 - The written request conveyed a request for information within the first two hundred fifty (250) words of the body of a letter, facsimile, email or email attachment, or
 - The written request included the words, characters, or abbreviations for “freedom of information,” “information,” “FOIA,” “copy,” or a recognizable misspelling of such, or legal code reference to MCL 15.231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if, in the sole judgment of the FOIA coordinator, a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The township board may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

Section 7: Discounted Fees

Indigence

The FOIA coordinator shall discount the first twenty (\$20.00) dollars of the processing fee for a request if the individual requesting a public record submits an affidavit stating that he or she is:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

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

An affidavit is a sworn statement. The FOIA coordinator may make a Fee Waiver Affidavit Form available for use by the public. The township may require a statement by the requestor in the affidavit that the request is not being made in conjunction with other persons or outside parties in exchange for payment or remuneration to make the request.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The FOIA coordinator shall discount the first twenty (\$20.00) dollars of the processing fee for a request from:

- A nonprofit organization formally designated by the State to carry out activities under subtitle C of the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals With Mental Illness Act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
- Is made directly on behalf of the organization or its clients;
- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and
- Is accompanied by documentation of its designation by the State, if requested by the township.

Section 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the township board by filing an appeal of the denial with the office of the township FOIA coordinator.

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The township FOIA Appeal Form may be used.

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

Within ten (10) business days of receiving the appeal the township board shall respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial;

- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, issuing a notice extending the date to respond by not more than ten (10) business days and detailing the reason or reasons for said extension. The township board shall not issue more than one (1) notice of extension for a particular written appeal.

If the township board fails to respond to a written appeal, or if the township board upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Oakland County Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the township board, he or she may file a civil action in Oakland County Circuit Court within one hundred eighty (180) days after the township's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the township to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or township prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the township has arbitrarily and capriciously violated the FOIA or this ordinance by refusal or delay in disclosing or providing copies of a public record, the court shall order the township to pay a civil fine of one thousand (\$1,000.00) dollars, which shall be deposited into the general fund of the State treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of one thousand (\$1,000.00) dollars to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the township.

Section 9: Appeal of an Excessive FOIA Processing Fee

"Fee" means the total fee or any component of the total fee calculated under Section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the township to process a FOIA request exceeds the amount permitted by State law or under this policy, he or she must first appeal to the township board by submitting a written appeal for a fee reduction to the office of the township FOIA coordinator.

The appeal must be in writing, specifically state the word "appeal," and identify how the required fee exceeds the amount permitted. The township FOIA Appeal Form may be used.

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

Within ten (10) business days after receiving the appeal, the township board will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Under unusual circumstances, issuing a notice extending the date to respond by not more than ten (10) business days and detailing the reason or reasons for said extension. The township board shall not issue more than one (1) notice of extension for a particular written appeal.

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

Within forty-five (45) days after receiving notice of the township board's determination of an appeal, the requesting person may commence a civil action in Oakland County Circuit Court for a fee reduction.

If a civil action is commenced against the township for an excessive fee, the township is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

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

- The township does not provide for appeals of fees;
- The township board failed to respond to a written appeal as required; or
- The township board issued a determination to a written appeal.

If a court determines that the township required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of fifty (50%) percent or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the township has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the township to pay a civil fine of five hundred (\$500.00) dollars, which shall be deposited in the general fund of the State treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of five hundred (\$500.00) dollars to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the township.

Section 10: Conflict with Prior FOIA Policies and Procedures

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the township board or the township administration, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the township board or the township administration, the administrative rule promulgated by the FOIA coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control.

Section 11: Appendix of Charter Township of Commerce FOIA Forms

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