

Approved: November 22, 2022
Resolution No. 22-145

A. Purpose and Applicability

It is the policy of Ogemaw County that all persons, except those 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 employees. (MCL 15.231)

1. With respect to public document requests, it is the policy of Ogemaw County to comply with Michigan Freedom of Information Act (FOIA) in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.
2. The County acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The County 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. (MCL 15.231)
3. Ogemaw County will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. It is the policy of Ogemaw County is to disclose public records consistent with and in compliance with State law.
4. The County Board of Commissioners has established the following procedures and guidelines to implement the FOIA and has created a written public summary of the specific procedures and guidelines to submit written requests to the County and explaining how to understand the County's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. (MCL 15.234(4))

B. General Policies

The Ogemaw County Administrator is designated as the FOIA Coordinator for Ogemaw County. The County Administrator is authorized to designate other County staff to act on his/her behalf to accept and process written requests for public records and to approve denials. (MCL 15.236)

1. If a request for a public record is received by fax 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 County 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. (MCL 15.235(1))

2. Department Heads shall periodically review department spam and junk-mail folders. Public records requests discovered in spam or junk-mail folders shall be forwarded to the FOIA Coordinator immediately upon discovery.
3. The FOIA Coordinator may, in his/her discretion, implement administrative rules, consistent with State law and this Policy to administer the acceptance and processing of FOIA requests. (MCL 15.233(3))
4. The County is not obligated to create a new public record or make a compilation or summary of information which does not already exist. (MCL 15.233(5)) Neither the FOIA Coordinator nor other County staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.
5. The FOIA Coordinator shall keep a copy of all written requests for public records received by the County on file for a period of at least one year. (MCL 15.233(2))
6. The County will make this policy document and the public summary available without charge. (MCL 15.234(4)) This policy document and the public summary shall be maintained on the Ogemaw County web page (www.ocmi.us). A link to the documents may be provided in lieu of providing paper copies.

C. Requests for Public Record

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the County may be submitted on the County's Public Records Request Form, in any other form of writing (letter, fax, email, etc.). A request must sufficiently describe a public record so as to enable County personnel to identify and find the requested public record. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing. (MCL 15.233(1))

1. If a person makes a verbal, non-written request for information believed to be available on the County's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address. (MCL 15.234(5))
2. A person may request that public records be provided on non-paper physical media, emailed or other otherwise provided to him/her in digital form in lieu of paper copies. The County will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format. (MCL 15.234(1)(c))
3. A person may subscribe to future issues of public records that are created, issued or disseminated by Ogemaw County on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber. (MCL 15.233(1))

4. 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. (MCL 15.231(2))

D. Response to a Request

Unless otherwise agreed to in writing by the person making the request, the County will issue a response within five business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day. (MCL 15.235) In lieu of providing paper copies, a link to this policy document and the public summary shall be provided with all responses to requests for public records. (MCL 15.234(4)) The County will respond to a request, in writing, in one of the following ways.

1. Grant the Request.

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. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. (MCL 15.234)

- a) If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.
- b) If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the County will require a good-faith deposit before processing the request. (MCL 15.234(8))
- c) 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 County to process the request and also provide a best effort estimate of a time frame it will take the County to provide the records to the requestor. The best effort estimate shall be nonbinding on the County, 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. (MCL 15.234(8))

2. Issue a Notice of Denial.

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 (MCL 15.235(5)):

- a) An explanation as to why a requested public record is exempt from disclosure; or
- b) 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 County; or
- c) An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and

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- d) An explanation of the person's right to submit an appeal of the denial to either the County Board of Commissioners, or seek judicial review in the Circuit Court; and
 - e) 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.
 - f) The Notice of Denial shall be signed by the FOIA Coordinator. (MCL 15.235(6))
 - g) 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.
3. **Issue a Notice of Extension.**
The FOIA Coordinator may issue a notice extending for not more than ten (10) business days the period during which the County shall respond to a public records request. The County shall not issue more than one notice of extension for a particular request. (MCL 15.235(2)(d))
4. **Issue a Notice of Availability on the County Website.**
If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on the County website, the FOIA Coordinator shall notify the requestor in his/her written response that all or a portion of the requested information is available on the County website. (MCL 15.234(5))
- a) To the degree practicable in the specific instance, the written response must include a specific webpage address where the requested information is available.
 - b) The written response shall include detailed itemization which separates requested public records that are available on the County website from those that are not available on the County website and shall inform the requestor of the additional charge to receive copies of the public records that are available on the County website.
 - c) If the written response to a public records request includes the County website address for a requested record and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, the County shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation in MCL 15.234(2), not to exceed the actual costs of providing the information in the specified format.

E. Request to Inspect Public Records

The County 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 County records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal County operations. (MCL 15.233(3))

F. 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. (MCL 15.233(6))

G. 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 County Board of Commissioners by filing an appeal of the denial with the Chairperson of the County Board of Commissioners. The appeal must be in writing, specifically state the word “appeal” and identify the reason or reasons for the appeal. (MCL 15.240(1)(a))

1. The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Board of Commissioners meeting following submission of the written appeal. Within ten (10) business days of receiving the appeal, the County Board of Commissioners shall do one of the following:
 - a) Reverse the disclosure denial;
 - b) Uphold the disclosure denial; or
 - c) Reverse the disclosure denial in part and uphold the disclosure denial in part; or
 - d) Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the County Board of Commissioners shall respond to the written appeal. The County Board of Commissioners shall not issue more than one notice of extension for a particular written appeal. (MCL 15.240(2))
2. If the County Board of Commissioners fails to respond to a written appeal, or if the County Board of Commissioners 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 Circuit Court. (MCL 15.240(3))
3. Whether or not a requestor submitted an appeal of a denial to the County Board, he or she may file a civil action in Circuit Court within 180 days after the County’s final determination to deny the request. (MCL 15.240(1)(b))
 - a) If a court that determines a public record is not exempt from disclosure, it shall order the County 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. (MCL 15.240(4))
 - b) 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 County prevails in part, the court may, in its discretion, award

all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. (MCL 15.240(6))

- c) If the court determines that the County has arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a public record, the court shall order the County to pay a civil fine of \$1,000, 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 \$1,000 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 next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function. (MCL 15.240(7))

H. Calculation of Fees

1. A fee may be charged for the labor cost of copying/duplication. A fee will not be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the County because of the nature of the request in the particular instance, and the County specifically identifies the nature of the unreasonably high costs. (MCL 15.234)
 - a) 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 compared to the costs of the County's usual FOIA requests, not compared to the County's operating budget. (MCL 15.234) The following factors shall be used to determine an unreasonably high cost to the County:
 - 1) Volume of the public record requested
 - 2) Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
 - 3) Whether the public records are from more than one County department or whether various County offices are necessary to respond to the request.
 - 4) The available staffing to respond to the request.
 - 5) Any other similar factors identified by the FOIA Coordinator in responding to the particular request.
 - b) The Michigan FOIA statute permits the County to charge for the following costs associated with processing a request (MCL 15.234):
 - 1) 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.

- 2) 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 County.
 - 3) 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 County.
 - 4) 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 County's website the requestor asks for the County to make copies.
 - 5) The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the County's website the requestor asks for the County to make copies.
 - 6) The cost to mail or send a public record to a requestor.
2. Labor costs will be calculated based on the following requirements (MCL 15.234(1)):
- a) All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
 - b) Labor costs will be charged at the hourly wage of the lowest-paid County employee capable of doing the work in the specific fee category, regardless of who actually performs work.
 - c) Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
 - d) The County 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.
 - e) 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.
 - f) Contracted labor costs will be charged at the hourly rate of equal to six-times the state minimum hourly wage.
3. The cost to provide records on non-paper physical media when so requested will be based on the following requirements (MCL 15.234(1)(c)):
- a) 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.

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- b) This cost will only be assessed if the County has the technological capability necessary to provide the public record in the requested non-paper physical media format.
 - c) The County will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the County's technology infrastructure.
4. The cost to provide paper copies of records will be based on the following requirements (MCL 15.234(1)(d)):
- a) Paper copies of public records made on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
 - b) The County will provide records using double-sided printing, if it is cost-saving and available.
5. The cost to mail records to a requestor will be based on the following requirements (MCL 15.234(1)(f)):
- a) The actual cost to mail public records using a reasonably economical and justified means.
 - b) The County may charge for the least expensive form of postal delivery confirmation.
 - c) No cost will be made for expedited shipping or insurance unless specified by the requestor.
6. If the FOIA Coordinator does not respond to a written request in a timely manner, the County must (MCL 15.234(9)):
- a) Reduce the labor costs by 5% for each day the County exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - 1) The County's late response was willful and intentional;
 - 2) The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - 3) 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.
 - b) Fully note the charge reduction in the Detailed Itemization of Costs Form.

I. Fee Deposits

1. If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee. (MCL 15.234(8))
2. If a request for public records is from a person who has not paid the County in full 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 of the following conditions exist (MCL 15.234(11)):
 - a) The final fee for the prior written request is not more than 105% of the estimated fee;
 - b) The public records made available contained the information sought in the prior written request and remain in the County's possession;
 - c) The public records were made available to the individual, subject to payment, within the time frame estimated by the County to provide the records;
 - d) Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
 - e) The individual is unable to show proof of prior payment to the County; and
 - f) The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
 - g) The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply (MCL 15.234(12)):
 - 1) The person making the request is able to show proof of prior payment in full to the County;
 - 2) The County is subsequently paid in full for the applicable prior written request; or
 - 3) One year has passed since the person made the request for which full payment was not remitted to the County.

J. 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 Board of Commissioners may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

K. Discounted Fees

1. Indigence. The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are (MCL 15.234(2)(a)):
 - a) Indigent and receiving specific public assistance, or
 - b) If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.
 - c) An individual is not eligible to receive the waiver if:
 - 1) The requestor has previously received discounted copies of public records from the County twice during the calendar year; or
 - 2) The requestor requests information in connection with other persons who are offering or providing payment to make the request.
 - d) An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.
2. Nonprofit organization advocating for developmentally disabled or mentally ill individuals. The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, if the request meets all of the following requirements (MCL 15.234(2)(b)):
 - a) is made directly on behalf of the organization or its clients.
 - b) 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.
 - c) is accompanied by documentation of its designation by the state, if requested by the public body.

L. Appeal of an Excessive FOIA Processing Fee

1. “Fee” means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit (MCL 15.234).
2. If a requestor believes that the fee charged by the County to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the Chairperson of the County Board of Commissioners by submitting a written appeal for a fee reduction to the

office of the County Board of Commissioners. The appeal must be in writing, specifically state the word “appeal” and identify how the required fee exceeds the amount permitted. The County FOIA Appeal Form may be used (MCL 15.240a).

- a) The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Board of Commissioners meeting following submission of the written appeal. (MCL 15.240a(3))
- b) Within 10 business days after receiving the appeal, the County Board of Commissioners will respond in writing by (MCL 15.240a(2)):
 - 1) Waiving the fee;
 - 2) Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
 - 3) Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
 - 4) Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the County Board of Commissioners will respond to the written appeal. The County Board of Commissioners shall not issue more than one notice of extension for a particular written appeal.
- c) Where the County Board of Commissioners reduces or upholds the fee, the determination must include a certification from the County Board of Commissioners 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 (MCL 15.240a(2)(c)).
- d) Within 45 days after receiving notice of the County Board’s determination of an appeal, the requesting person may commence a civil action in Circuit Court for a fee reduction (MCL 15.240a(1)(b)).
- e) If a civil action is commenced against the County for an excess fee, the County is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. (MCL 15.240a(1)(b))
- f) An action shall not be filed in circuit court unless one of the following applies (MCL 15.240a(1)(b)):
 - 1) The County does not provide for appeals of fees,
 - 2) The County Board of Commissioners failed to respond to a written appeal as required, or
 - 3) The County Board of Commissioners issued a determination to a written appeal.

- g) If a court determines that the County 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. (MCL 15.240a(4))
- h) If the requesting person prevails in court by receiving a reduction of 50% 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. The award shall be assessed against the public body liable for damages. (MCL 15.240a(6))
- i) If the court determines that the County has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the County to pay a civil fine of \$500, 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 \$500 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 next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function (MCL 15.240a(7)).

M. Conflict with Prior FOIA Policies and Procedures; Effective Date

1. To the extent that this policy conflicts with previous FOIA policies promulgated by County Board of Commissioners or the county administration, this policy is 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 County Board of Commissioners or the county administration, the administrative rule promulgated by the FOIA Coordinator is controlling.
2. To the extent that any provision of this policy or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the County Board of Commissioners or the county administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the County Board of Commissioners of any change these Policies and Guidelines.
3. This FOIA Policy shall become effective upon adoption by the Board of Commissioners.