

Category: 100

Number: 113

Subject: **FREEDOM OF INFORMATION ACT POLICY**

1. **PURPOSE:** The purpose of this policy is to establish guidelines for the acceptance and processing of requests for St. Clair County's public records under the Freedom of Information Act.
2. **AUTHORITY:** St. Clair County Board of Commissioners.
3. **APPLICATION:** This policy applies to all County Elected officials, Department Heads, Employees and Agencies of St. Clair County.
4. **RESPONSIBILITY:** The St. Clair County Administrator/Controller shall be responsible for the implementation and administration of this policy.
5. **DEFINITIONS:** None
6. **POLICY:**

**A. FREEDOM OF INFORMATION ACT (FOIA)**

It is the public policy of the State of Michigan that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees. A person has the right to submit a written request for public record(s) from the County of St. Clair. The request must sufficiently describe the public record to enable the FOIA Coordinator or designee to identify the requested public record.

The County of St. Clair has a designated individual appointed as the County's FOIA Coordinator. The FOIA Coordinator shall be responsible for accepting and processing requests for St. Clair County's public records under the FOIA and shall be responsible for coordinating Section C of this Policy. The FOIA Coordinator may designate other individual(s) to act on his or her behalf in accepting and processing requests for St. Clair County in other county departments. The County's FOIA Coordinator shall maintain a master list of all designees processing FOIA requests within the County and a copy of all official responses.

**B. REQUESTOR RESPONSIBILITIES UNDER FOIA**

1. The requestor of records must submit a written request for public record(s) from St. Clair County. A specific form to submit a request is not required. However, a FOIA request form is available on the County's website at: [www.stclaircounty.org](http://www.stclaircounty.org).
2. The written request must sufficiently describe the public record to enable the FOIA Coordinator or designee to identify the requested record. The FOIA Coordinator or designee may send a notice requesting clarification of the request. Such notice shall

not be interpreted as a denial. Any clarification or amendment will be considered a new request subject to timelines set forth in Section C.

3. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. This request is not automatic and the requestor must submit a separate written subscription to the FOIA Coordinator or designee.
4. A person may request the public records be provided on non-paper physical media, electronically mailed, or otherwise provided in lieu of paper copies. This request will be complied with if the County possesses the necessary technological capability to provide the records in the requested format.
5. Any request received that includes information available on the County website will be provided a written response that indicates all or a portion of the information is available on the website and shall include the specific webpage address where the requested information is available and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website.

### **C. COUNTY RESPONSIBILITIES UNDER FOIA**

1. The FOIA Coordinator or designee shall respond to all written requests within 5 business days of receipt of a FOIA in one of the following ways:
  - (a) Grant the request.
  - (b) Issue a written notice denying the request.
  - (c) Grant the request in part and issue a written notice denying in part the request.
  - (d) Issue a notice indicating that due to the nature of the request the County needs an additional 10 business days to respond. Only one such extension is permitted.
2. A written request made by facsimile, electronic mail, or other electronic transmission is not considered received by the FOIA Coordinator or designee until 1 business day after the electronic transmission is made.
3. If the requested is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for allowable fees associated with responding to the request before the public record is made available
  - (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 \$50 or more based on a good faith calculation, or if the requester has not paid in full a previously granted request, the requester will be required to pay a deposit as set forth in Section D before the request will be fulfilled.
  - (c) A website link to a copy of this policy with procedures and guidelines shall be included with the response.
4. The FOIA Coordinator shall review spam and junk-mail folders on a regular basis, which shall be no less than once a month
  - (a) Any FOIA request contained within a spam or junk-mail folder shall be considered received 1 day after the request is discovered.
  - (b) Both the date the request was delivered into the spam or junk-mail folder and date of discovery shall be noted.
5. If the request indicates that the requestor desires to inspect public records, the FOIA Coordinator or designee will contact the requestor to arrange for inspection of non-exempt public records. The FOIA Coordinator or designee must provide

reasonable facilities so that persons making a request may examine and take notes. The facilities are only required to be available during the normal business hours of the County.

6. The custodian of a public record shall provide a certified copy of the record if requested in writing.
7. If the FOIA Coordinator makes a final determination to deny all or a portion of a request, the FOIA Coordinator will issue a Notice of Denial which shall provide the applicable circumstance:
  - (a) An explanation as to why a requested public record is exempt from disclosure.
  - (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.
  - (c) An explanation or description of the public record or information within a public record that is separated or deleted from the public record.
  - (d) An explanation of the person's right to submit an appeal of the denial to the St. Clair County Administrator/Controller or seek judicial review in the St. Clair County Circuit Court.
  - (e) An explanation of the right to receive attorney's fees, costs and disbursements as well as 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.
6. The FOIA does not require a public body to make a compilation, summary, or report of information, except as required in section 11 of the Act, if it does not already exist. This exemption includes analyzing, compiling or summarizing existing information into a new format. It also does not require the FOIA coordinator or other staff to provide answers to questions contained in request for public records or regarding the content of the records themselves.
7. The FOIA Coordinator and designees will utilize their best efforts to respond to all FOIA requests. However, the County will search only the most likely locations for the records. Under the FOIA, the County is not required to search each and every record it maintains in order to discover material that might pertain to a specific request.
8. The FOIA Coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

#### **D. FEE DEPOSITS**

1. If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the County, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.
2. If a request for public records is from a person who has not fully paid the County 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:
  - (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) 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.
  - (f) The FOIA Coordinator has calculated a detailed itemization that is the basis of the current written request's increased estimated fee deposit.
3. The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:
- (a) The person making the request is able to show proof of prior payment in full to the County.
  - (b) The County is subsequently paid in full for the applicable prior written request
  - (c) 365 days have passed since the person made the request for which full payment was not remitted to the County.

**E. CALCULATION OF FEES.**

1. 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 County because of the nature of the request in the particular instance, and the County specifically identifies the nature of the unreasonably high costs.
2. The County of St. Clair may charge for the following costs associated with processing a FOIA request:
  - (a) Labor costs directly associated with searching for, locating and examining a requested public record if failure to charge a fee would result in unreasonably high costs to the County and the County specifically identifies the nature of the unreasonably high costs
  - (b) Labor costs associated with the review of a record to separate and redact information exempt from disclosure from information that is disclosed if failure to charge a fee would result in unreasonably high costs to the County and the County specifically identifies the nature of the unreasonably high costs
  - (c) The actual cost of computer discs, tapes or other digital or similar media.
  - (d) The cost of duplication or publication of paper copies of public records.
  - (e) The cost of labor associated with duplication or publication, including the production of paper copies, digital copies, or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
  - (f) The actual cost of mailing or sending a public record.
3. Labor costs will be calculated based on the following conditions:
  - (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 employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
  - (c) Labor costs will also include a charge to cover, or partially cover, the cost of fringe benefits, up to 50% of the applicable labor charge. In no case shall it exceed the actual cost of fringe benefits.

- (d) 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.
- 4. The cost to provide records on non-paper physical media when so requested will be based on the following conditions:
  - (a) Computer disks, tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
  - (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.
- 5. The cost to provide paper copies of records will be based on the following conditions:
  - (a) Paper copies of public records produced on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$0.10 per sheet. Copies for non-standard sized papers will reflect the actual cost of reproduction.
  - (b) The County shall provide records using double-sided printing, if cost-saving and available.
- 6. The cost to mail records to a requestor will be based on the following conditions:
  - (a) The actual cost to mail public records using a reasonably economical and justified means.
  - (b) The County of St. Clair may charge for the least expensive form of postal delivery confirmation.
  - (c) No charge will be assessed for expedited shipping or insurance, unless specifically requested.
- 7. In the event the FOIA Coordinator does not respond to a written request in a timely manner, as required by the Act, the following shall be implemented:
  - (a) Reduction in labor costs by 5% for each day the permitted time under FOIA is exceeded, up to a 50% maximum reduction if any of the following applies:
    - (i) The late response was willful and intentional
    - (ii) The written request, within the first 250 words of the body of the request conveyed a request for information
    - (iii) The written request included the words, characters, or abbreviations for “Freedom of Information”, “information”, “FOIA”, “copy” or a recognizable misspelling of such; or a legal reference to MCL15.231 et seq or 1976 Public Act 442 on the front of an envelope, in the subject line of an e-mail, letter or facsimile cover page.
  - (b) The fee reduction shall be fully noted in the Detailed Itemization of Costs Form.

#### **F. WAIVER OF FEES**

- 1. The cost of the search for and reproduction of a public record may be waived or reduced, if in the sole judgement of the FOIA Coordinator, a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public.
- 2. The FOIA Coordinator shall waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating they are:
  - (a) Indigent and receiving specific public assistance.
  - (b) If not receiving public assistance, states facts demonstrating an inability to pay because of indigence.
- 3. An individual is not eligible to receive the waiver if:

- (a) The requestor has previously received discounted copies of public records from the County of St. Clair twice during the calendar year.
  - (b) The request for information is made in connection with other persons who are offering or providing payment to make the request.
4. A nonprofit organization designated by the State to carry out activities under subtitle C of the Developmental disabilities Assistance and Bill of rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all of the following requirements:
- (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, MCL 330.1931.
  - (c) Is accompanied by documentation of its designation by the State.

**G. APPEAL OF DENIAL OF PUBLIC RECORD**

1. In accordance with the FOIA, if the FOIA Coordinator or designee makes a determination to deny all or a portion of a request, the requestor may file a written appeal of the decision with the St. Clair County Administrator/Controller. The appeal must be in writing, specifically state the word “appeal” and identify the reason(s) the requestor is seeking a reversal of the denial.
2. Within 10 business days of receiving the appeal, the St. Clair County Administrator/Controller will respond in writing by:
  - (a) Reversing the disclosure denial.
  - (b) Upholding the disclosure denial.
  - (c) Reverse the disclosure denial in part and uphold the disclosure denial in part.
  - (d) Under unusual circumstances, the St. Clair County Administrator/Controller may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.
3. Whether the requestor has submitted an appeal of denial to the St. Clair County Administrator/Controller or not, he or she may commence a civil action in the St. Clair County Circuit Court within 180 days of the County’s final determination to deny the request.
4. If the court determines the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys’ fees, costs and disbursements. If the court determines the appellant prevails only in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys’ fees, costs and disbursements.
5. If the court determines the County arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the amount of \$1,000.

**H. APPEAL OF AN EXCESSIVE FOIA PROCESSING FEE**

1. In accordance with the FOIA, if a requestor believes that the fee charged by the County or process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the St. Clair County Administrator/Controller. The appeals must be in writing, specifically state the word “appeal” and identify how the required fee exceeds the amount permitted.
2. Within 10 business days of receiving the appeal, the St. Clair County Administrator/Controller will respond in writing by:
  - (a) Waiving the fee

- (b) Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee
  - (c) Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee
  - (d) Under unusual circumstances, the St. Clair County Administrator/Controller may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.
3. If the St. Clair County Administrator/Controller reduces or upholds the fee, the determination must include a certification that the statements in determination are accurate and that the reduced fee amount complies with this policy.
  4. Within 45 days after receiving notice of the St. Clair County Administrator/Controller's determination of an appeal, the requesting person may commence a civil action in the St. Clair County Circuit Court for a fee reduction.
    - (i) If a civil action is commenced against the County for an excessive fee, the County is not obligated to complete processing of the written request for the public record at issue until the court resolves the fee dispute.
    - (ii) An action shall not be filed in circuit court unless the St. Clair County Administrator/Controller failed to respond to a written appeal as required or issued a determination to a written appeal.
  5. If the St. Clair County Circuit Court determines that the County required a fee that exceeds the amount permitted under the FOIA or its guidelines, the court shall reduce the fee to a permissible amount.
    - (i) If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the St. Clair County Circuit Court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.
    - (ii) If the St. Clair County Circuit Court determines that the County arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the County to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The St. Clair County Circuit Court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction.

**7. ADMINISTRATIVE PROCEDURES:** None

**8. ADMINISTRATOR/CONTROLLER AND LEGAL COUNSEL REVIEW:** The Administrator/Controller shall sign off on all new and amended policies as to substance. The County Legal Counsel shall sign off on all new and amended policies as to legal content. These signoffs shall accompany and be completed prior to submission to the Board of Commissioners for consideration and approval.

**Adopted:** October 15, 2008

**Revised:** June 18, 2015