

Ogemaw County Road Commission

FOIA Policy for Procedures and Guidelines

FOIA Policy Summary

It is the policy of Ogemaw County Road Commission that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The Road Commission'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 Road Commission acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Road Commission 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.

Ogemaw County Road Commission will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Road Commission's policy is to disclose public records consistent with and in compliance with State law. A copy of this Procedures and Guidelines document must be publicly available by providing free copies both in the Road Commission's response to a written request and upon request by visitors at Ogemaw County Road Commission offices.

The County Board of Road Commissioners has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal.

FOIA Procedures and Guidelines

The Ogemaw County Board of Road Commissioners, acting pursuant to the authority at MCL 15.236, designates the Manager as the FOIA Coordinator. The FOIA Coordinator is authorized to designate other Road Commission staff to act on their behalf to accept and process written requests for the Road Commission's public records and approve denials.

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 Road Commission 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 may, in his or her discretion, implement administrative rules, consistent with State law and this Policy and Guidelines to administer the acceptance and processing of FOIA requests.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Road Commission may be submitted on the Road Commission's FOIA Request Form. A request must sufficiently describe a public record so as to enable Road Commission personnel to identify and find the requested public record.

If a person makes a verbal, non-written request for information believed to be available on the Ogemaw County Road Commission's website, where practicable and to the best ability of the employee receiving the request, shall inform the requestor of the pertinent website address.

Unless otherwise agreed to in writing by the person making the request, the Road Commission will issue a response within 5 business days of receipt of a FOIA request. If more time is needed, the Road Commission will notify the requester in writing and extend the time for an additional 10 business days.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Fees for search, inspection and copying shall be:

- Labor costs (including fringe benefits) for the time spent searching for, examination of, review of and duplication of documents, and the deletion and separation of exempt information from non-exempt information.
- Fee for copying letter and legal size - \$.10 per copy.
- Fee for Plans – actual cost for reprinting Plans
- Actual cost of mailing requested documents
- A good faith deposit of 50% of actual costs will be required if the estimated fee for the search, examination, review and duplication of documents exceeds \$50.00.
- Fees must be paid in full to the Ogemaw County Road Commission prior to actual delivery of the copied documents.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Road Commission 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 Road Commission may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs 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 a cost not to exceed more than 6 times the state minimum hourly wage rate.

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 indigent and non-profit and receiving specific public assistance or if not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Road Commission must: •

- Reduce the labor costs by 5% for each day the Road Commission's exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The Road Commission's late response was willful and intentional,
 - 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
 - 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.

There will be no charge or a reduced charge if the search, inspection and copying is determined to primarily benefit the general public as determined by the Ogemaw County Road Commission.

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 Ogemaw County Board of Road Commissioners by filing an appeal of the denial with the office of the Ogemaw County Road Commission.

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 Ogemaw County Road Commission FOIA Appeal Form (To Appeal a Denial of Records), may be used.

The Ogemaw County Board of Road Commissioners is not considered to have received a written appeal until the first regularly scheduled Ogemaw County Board of Road Commissioners meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the County Board of Road Commissioners will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Ogemaw County Board of Road Commissioners shall respond to the written appeal. The Ogemaw County Board of Road Commissioners shall not issue more than 1 notice of extension for a particular written appeal.

If the Ogemaw County Board of Road Commissioners fails to respond to a written appeal, or if the Ogemaw County Board of Road 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.

Whether or not a requestor submitted an appeal of a denial to the Ogemaw County Board of Road Commissioners, he or she may file a civil action in Ogemaw County Circuit Court within 180 days after the Road Commission's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the Road Commission 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 Road Commission 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 Road Commission has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Road Commission to pay a civil fine of \$1,000.00, 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 \$1,000.00 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.

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 Ogemaw County Road Commission to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the Ogemaw County Board of Road Commissioners by submitting a written appeal for a fee reduction to the office of the Ogemaw County Road Commission.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The Ogemaw County Road Commission FOIA Appeal Form (To Appeal an Excess Fee) may be used.

The Ogemaw County Board of Road Commissioners is not considered to have received a written appeal until the first regularly scheduled Ogemaw County Board of Road Commissioners meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the Ogemaw County Board of Road Commissioners 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
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Ogemaw County Board of Road Commissioners will respond to the written appeal. The Ogemaw County Board of Road Commissioners shall not issue more than 1 notice of extension for a particular written appeal.

Where the Ogemaw County Board of Road Commissioners reduces or upholds the fee, the determination must include a certification from the Ogemaw County Board of Road 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.

Within 45 days after receiving notice of the Ogemaw County Road Commission Board's determination of an appeal, the requesting person may commence a civil action in Ogemaw County Circuit Court for a fee reduction.

If a civil action is commenced against the Ogemaw County Road Commission for an excess fee, the Ogemaw County Road Commission 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 Road Commission failed to respond to a written appeal as required,
- The Road Commission does not provide for appeals of fees, or
- The Road Commission issued a determination to a written appeal.

If a court determines that the Ogemaw County Road Commission 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 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.

If the court determines that the Road Commission has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Road Commission to pay a civil fine of \$500.00, 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 \$500.00 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.

These FOIA Policies and Guidelines become effective June 17, 2015. Revised October 18, 2017

Records Located on Website

If the OCRC directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the OCRC must notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the OCRC must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the OCRC has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the OCRC must provide the public records in the specified format (if the OCRC has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

Request for Copies/Duplication of Records on OCRC Website

I hereby stipulate that, even if some or all of the records are located on a OCRC website, I am requesting that the OCRC make copies of those records on the website and deliver them to me in the format I have requested above. I understand that FOIA fees may apply.

Requestor's Signature

Date

Overtime Labor Costs

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

Consent to Overtime Labor Costs

I hereby agree and stipulate to the OCRC using overtime wages in calculating the following labor costs as itemized in the following categories:

- 1. Labor to copy/duplicate
- 2. Labor to locate
- 3a. Labor to redact
- 3b. Contract labor to redact
- 6b. Labor to copy/duplicate records already on OCRC's website

Requestor's Signature

Date

Request for Discount: Indigence

A public record search must be made and a copy of a public record must be furnished without charge for the first \$20.00 of the fee for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, OR
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if ANY of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
- (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

Office Use: Affidavit Received Eligible for Discount Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

Request for Discount: Nonprofit Organization

A public record search must be made and a copy of a public record must be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally 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, if the request meets ALL of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.
- (ii) 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.
- (iii) Is accompanied by documentation of its designation by the state, if requested by the OCRC.

Office Use: Documentation of State Designation Received Eligible for Discount Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and 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:

Date:

Requestor's Signature: