

## FREEDOM OF INFORMATION REQUEST POLICY

Revised 7/01/15

### 1. PURPOSE

The purpose of this policy is to:

- 1.1 Assure compliance with the Freedom of Information Act by all Tuscola County Departments and Offices as permitted by statute(s).
- 1.2 Formulate a comprehensive written County policy regarding the dissemination of information pursuant to the Freedom of Information Act MCL 15.231 et seq, Public 553 of 1997, as amended.
- 1.3 Assure consistency with the Act that all persons except those incarcerated in state or local correctional facilities are entitled to full and complete information regarding governmental decision making.
- 1.4 Designate the Chairperson of the Tuscola County Board of Commissioners as the FOIA Coordinator and authorize the Board Chairperson to designate a staff member to act on the Chair's behalf.
- 1.5 Communicate to County Elected Officials, Department Heads, Employees, and the Public the formal County Policy on Freedom of Information requests.

This policy applies to all County Elected Officials, Department Heads, Employees and Agencies of Tuscola County.

The Board Chairperson shall have responsibility for implementing this policy with assistance from the Controller/Administrator's Office.

A free copy of this policy will be available at the Tuscola County Controller's Office, 125 W. Lincoln Street, Caro MI 48723 and on the County website, [www.tuscolacounty.org](http://www.tuscolacounty.org).

### 2. POLICY

- 2.1 FOIA Coordinator. In accordance with the Act, the Chairperson of the Tuscola County Board of Commissioners is the County FOIA Coordinator. The FOIA Coordinator shall be responsible for accepting and processing requests for records covered under the Act and shall be responsible for approving a denial in accordance with the Act. The FOIA Coordinator may also appoint assistants to respond to FOIA requests.

## FREEDOM OF INFORMATION REQUEST POLICY

2.2 In accordance with the Act. The Tuscola County Board of Commissioners Chairperson may designate a staff member of the Controller/Administrator's Office to act on the Chairperson's behalf in accepting and processing requests for the County's Public Records and in approving denial of same. The FOIA Coordinator may also refer the request to the appropriate individual or County attorney to prepare a response. Said response should be approved by and copied to the FOIA Coordinator before being submitted.

2.3 Submission of Requests. All FOIA requests must be submitted in writing **and should include the word 'FOIA'**. This includes requests received by facsimile, electronic mail or through other electronic means. Requests received by facsimile or other electronic means are considered received the first business day following the transmittal. **Requests may be sent to Tuscola County Controller's Office, 125 W. Lincoln Street, Caro, MI 48723 or faxed to 989-672-4011. Routine FOIA requests for departmental information may be received and processed by the proper County Departments and/or offices as specifically delegated by the FOIA Coordinator.**

**A person has a right to inspect, copy, or receive copies of the public records of a public body.**

**A person may subscribe to a public entity for future issuances of public records for up to 6 months. This only applies to public records created/issued on a regular basis.**

2.4 Response. (See attached Standardized Form) Within five (5) business days the FOIA Coordinator or designee will:

2.4.1 Grant the request, or

2.4.2 Grant the request in part and deny part of the request, or

2.4.3 Deny the request, or

**2.4.4 Grant the request with redactions**

2.4.5 Request a one (1) time extension of ten (10) business days for additional response time.

2.4.6 In the situation where the fees of granting the request are expected to exceed \$50.00, a notice to provide 50% of the fees



## FREEDOM OF INFORMATION REQUEST POLICY

prior to granting the request will be sent.

**2.4.7 Advise that all or some of the requested information is available free of charge on the county website, [www.tuscolacounty.org](http://www.tuscolacounty.org).**

2.5 Records that must be produced. A request must describe the public record sufficiently to enable the public body to find the public record. A request that is overly vague or that does not give reasonable time parameters will be denied. A specific request can be properly denied if it falls within one of the exemptions listed in the FOIA.

2.6 Denial. Notice to deny a request in whole, or part, by the FOIA Coordinator or designee shall contain an explanation for the grounds under FOIA or other statute for the determination that the public record or portion of the public record is exempt from disclosure, if that is the reason for denying all or part of the request. If an exemption is used to deny a request, the specific statutory citation for the exemption will be listed with a copy of the statutory exemption highlighting the specific exemption attached. All denials must be signed by the FOIA Coordinator or designee. All denials will also include a description of the denied record, an explanation of the requestor's right to appeal and/or a certificate verifying that the attached record does not exist under the name given by the requestor or by another name reasonably known to the public body. All full or partial denials shall be copied simultaneously to the Tuscola County legal counsel.

2.7 Fees. In accordance with the FOIA, Tuscola County may charge fees for reproducing requested records; this shall include actual mailing cost, duplication or publication cost including labor, the cost of the search, examination, review, and the cost of separation of exempt from non-exempt information. A good faith deposit is requested where charges are expected to exceed fifty dollars (\$50). The deposit cannot exceed half of the total expected fee. The FOIA Coordinator will by mail, advise the requestor that they can obtain copies of the records requested by first paying the above applicable fees.

**The costs that can be recovered under FOIA are in the following six (6) categories described in the Act.**

- 1) A public body may charge for the labor associated with searching for, locating and examining of public records in conjunction with receiving and fulfilling a granted written request.**

## FREEDOM OF INFORMATION REQUEST POLICY

The calculation of these labor costs cannot be more than the hourly wage of the lowest paid employee capable of retrieving the requested information. All labor costs must be charged in 'increments of 15 minutes' with all partial time increments being 'rounded down'.

A public body can recover an employee's fringe benefits. However, the fringe benefit cannot exceed 50% of the employee's actual hourly, labor cost.

- 2) That portion of labor costs, including necessary review, directly associated with the separating and deleting of exempt information from nonexempt information. If the public body does not have a person on staff that is capable of separating and deleting the material, the public body may use contracted labor. A public body may receive some reimbursement for third-party contractors it must hire in order to satisfy a FOIA request. It also appears the amendment includes law firms. This contracted labor must be stated specifically on the detailed itemization form and cannot exceed 6 times the state minimum hourly wage.

If the public body performs these functions of separating and deleting the exempt information, the calculation of these labor costs cannot be more than the hourly wage of the lowest paid employee capable of retrieving the requested information. All labor costs must be charged in 'increments of 15 minutes' with all partial time increments being 'rounded down'.

- 3) The public body may charge for non-paper physical media (i.e., computer discs, computer tapes or other digital or similar media). It must be done in the most reasonably economical cost. This does not apply if the public body lacks the technological capability necessary to provide the records in that format.
- 4) For paper copies, the actual incremental cost of necessary duplication or publication (i.e., cost of toner, paper and equipment lease or purchase), not including labor. This shall not exceed 10 cents per 8 ½ x 11 inch or 8 ½ x 14 inch sheet of paper. The public body must use double-sided printing if cost saving will occur and is available.
- 5) The cost of labor associated with duplication or publication, including making paper copies, making digital copies, or



## FREEDOM OF INFORMATION REQUEST POLICY

transferring digital public records to be given to the requestor. Labor costs under this section may be estimated and charged in increments of the public body's choosing, but all partial increments shall be rounded down.

- 6) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The public body may not charge more for expedited shipping or insurance unless specifically stipulated by the requestor. Otherwise, the public body may charge for the least expensive form of postal or postal delivery confirmation when mailing public records.

A fee as described in section 2.7 shall 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 public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

A public body must furnish a public record without charge for the first \$20.00 of the proposed fee if the individual provides adequate proof of their indigent status. This waiver may be used by an individual twice during the same calendar year from the same public body.

### 2.8 Requestor's Right to Appeal

#### Appeal Options for Non-Disclosure

A requesting party may:

- 1) Forward a written appeal to the head of the public body that specifically states why reversal is proper; or
- 2) Seek judicial review of the denial in the circuit court requesting disclosure of the public records within 180 days of the denial.

Within 10 business days after receiving a written appeal, the head of the public body shall do one of the following:

- 1) Reverse the disclosure denial.
- 2) Issue a written notice to the requesting party upholding the disclosure denial.
- 3) Reverse the disclosure denial in part and issue a written notice to the requesting party upholding the disclosure denial in part.

## FREEDOM OF INFORMATION REQUEST POLICY

- 4) Under unusual circumstances, issue a notice extending the appeal period for not more than 10 business days. The head of the public body may not issue more than one notice of extension for a particular written appeal.

### Appeal Options for Fees Charged

The requesting party may:

- 1) Submit to the head of the public body a written appeal for a fee reduction that states the word 'appeal' and identifies how the fee exceeds the written procedure and guidelines or the Act.

Within 10 business days, the head of the public body shall do one of the following:

- 1) Waive the fee.
- 2) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 2.7 that supports the remaining fee.
- 3) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the required fee.
- 4) Issue a notice of a one-time 10 business day extension to respond to the appeal.

2.9 File FOIA Request. The FOIA Coordinator or designee will keep on file a time stamped copy of all requests and responses for a period of one (1) year following their issuance.

## FOIA – Affidavit of Indigence

In accordance with FOIA, Tuscola County may charge fees for reproducing requested records; which shall include mailing cost, duplication labor, the cost of the search, examination, review and the cost of separation of exempt from non-exempt information.

Tuscola County must furnish a public record without charge for the first \$20.00 of the proposed fee if the individual provides adequate proof of their indigent status. This waiver may be used by an individual twice during the same calendar year from the same public body.

This affidavit is submitted in support of a request that Tuscola County waive the fee.

I, \_\_\_\_\_, do affirm or swear under penalty of perjury that:

(Check one)

\_\_\_\_ 1. I am receiving public assistance, or

\_\_\_\_ 2. I am unable to pay the cost for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of requestor

Signed and sworn before me in \_\_\_\_\_ County, Michigan on \_\_\_\_\_.

Notary's signature \_\_\_\_\_

Notary's stamp \_\_\_\_\_

(Notary's name, county, acting in county, and date commission expires)

AUTHORITY: 1976 PA 442

# FOIA Fee Itemization Form

(Effective July 1, 2015)

Component	Cost Calculations	Total
<b>1. Labor Costs – Search, Location, and Examination of Records*</b>	<p>Enter the hourly wage of lowest paid employee capable of performing the search, location and examination \$ _____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) _____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier \$ _____ x 1. _____ = \$ _____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs) \$ _____ + _____ = \$ _____</p> <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment \$ _____ / 4 = \$ _____</p>	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate _____ x \$ _____ = \$ _____</p>	\$ _____
<b>2. Employee Labor Costs – Redaction*</b>	<p>If performed by the public body's employee:</p> <p>Enter the hourly wage of lowest paid employee capable of performing the redaction \$ _____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost) _____ %</p> <p>Multiply the hourly wage times the fringe benefit multiplier</p>	



	$\text{\$ } \underline{\hspace{1cm}} \times 1. \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{1cm}}$ <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)</p> $\text{\$ } \underline{\hspace{1cm}} + \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{1cm}}$ <p>Divide the resulting hourly wage by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$ } \underline{\hspace{1cm}} / 4 = \text{\$ } \underline{\hspace{1cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{1cm}} \times \text{\$ } \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{1cm}}$	$\text{\$ } \underline{\hspace{1cm}}$
<b>2. Contracted Labor Costs – Redaction*</b>	<p>If performed by Contracted Labor (Only permitted if the public body does not employ a person capable of redacting the records as determined by the FOIA Coordinator):</p> <p>Name of person or firm contracted:</p> <p>_____</p> <p>Enter the hourly rate charged by the contractor (may not exceed six (6) times the State minimum wage (i.e. <math>\text{\\$}8.15 \times 6 = \text{\\$}48.90</math>)</p> <p style="text-align: right;"><math>\text{\\$ } \underline{\hspace{1cm}}</math> per hour</p> <p>Divide the hourly rate by four (4) to determine the charge per fifteen (15) minute increment</p> $\text{\$ } \underline{\hspace{1cm}} / 4 = \text{\$ } \underline{\hspace{1cm}}$	
	<p>Number of 15 minute increments (partial time increments must be rounded down) multiplied by the permitted rate</p> $\underline{\hspace{1cm}} \times \text{\$ } \underline{\hspace{1cm}} = \text{\$ } \underline{\hspace{1cm}}$	$\text{\$ } \underline{\hspace{1cm}}$
<b>3. Non-Paper Physical Media</b>	<p>Actual and most reasonably economical cost of:</p> <p>Flash Drives <math>\text{\\$ } \underline{\hspace{1cm}} \times \text{number used } \underline{\hspace{1cm}} = \text{\\$ } \underline{\hspace{1cm}}</math></p> <p>Computer Discs <math>\text{\\$ } \underline{\hspace{1cm}} \times \text{number used } \underline{\hspace{1cm}} = \text{\\$ } \underline{\hspace{1cm}}</math></p> <p>Other Media <math>\text{\\$ } \underline{\hspace{1cm}} \times \text{number used } \underline{\hspace{1cm}} = \text{\\$ } \underline{\hspace{1cm}}</math></p>	$\text{\$ } \underline{\hspace{1cm}}$
<b>4. Paper Copies</b>	<p>Actual total incremental cost of duplication (not including labor) up to a <u>maximum of 10 cents per page</u>:</p> <p>Letter paper (8 1/2" x 11")</p> <p style="text-align: right;">number of sheets <math>\underline{\hspace{1cm}}</math> x <math>\text{\\$}0. \underline{\hspace{1cm}} = \text{\\$ } \underline{\hspace{1cm}}</math></p>	

	<p>Legal paper (8 1/2" x 14")  number of sheets ____ x \$0.____ = \$____</p> <p>Actual cost of other types of paper:</p> <p>Type of Paper: _____  number of sheets ____ x \$____ = \$____</p> <p>Type of Paper: _____  number of sheets ____ x \$____ = \$____</p> <p><b>(NOTE: Must print double-sided if available and costs less.)</b></p>	\$____
<b>5. Labor Cost – Duplication Copying, and transferring records to non-paper physical media</b>	<p>Enter the hourly wage of lowest paid employee capable of performing the duplication, copying, or transferring digital records to non-paper physical media  \$____ per hour</p> <p>Multiply the wage by the fringe benefit multiplier (maximum of 50% of the hourly wage); OR, if the requested information is available online and the requestor request the documents to be provided in another format, the fringe benefit multiplier may exceed 50% (not to exceed actual cost)  ____%</p> <p>Multiply the hourly wage times the fringe benefit multiplier  \$____ x 1.____ = \$____</p> <p>If stipulated by the requestor, add the hourly overtime wage increment (but do not include in the calculation of fringe benefit costs)  \$____ + ____ = \$____</p> <p>Divide the resulting hourly wage by ____ to determine the charge per ____ ( ) minute increment  \$____ / 4 = \$____</p> <p><b>(NOTE: May use any time increment for this category)</b></p>	
	<p>Number of ____ minute increments (partial time increments must be rounded down) multiplied by the permitted rate  ____ x \$____ = \$____</p>	\$____
<b>6. Mailing</b>	<p>Actual cost of mailing records in a reasonable and economical manner:</p> <p>Cost of mailing: \$____</p> <p>Cost of least expensive form of postal delivery confirmation:  \$____</p> <p>Cost of expedited shipping or insurance only if specifically stipulated by the requestor:</p>	

	\$ _____	\$ _____
	<b>Subtotal</b>	\$ _____
<b>Waivers and Reductions</b>	Subtract any Fee Waiver or Reduction: \$20.00 for indigency or nonprofit organization as further described in the Public Body's procedures and guidelines.  Any amount determined by the Public Body due to the search and furnishing of the Public Record determined to be in the public interest. \$ _____  The reduction amount due to the late response of the Public Body. 5% of fee x _____ days late = _____ % reduction (maximum reduction is 50%)	         -\$ _____
<b>Deposit</b>	Subtract any good-faith deposit received: \$ _____	-\$ _____
	<b>Total Due</b>	\$ _____

\*Note: Labor costs for search, location, examination and redaction (categories 1 and 2 on the itemization form) may not be charged unless the failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

The Court of Appeals has interpreted this provision to require that the determination be made relative to the usual or typical costs incurred by the public body in responding to FOIA requests. The key factor in determining whether the costs are "unreasonably high" is the extent to which the particular request differs from the usual request. *Bloch v Davison Cmty Schools*, (Mich.App. Apr. 26, 2011), 2011 WL 1564645.