

Category: 120

Number: 122

Subject: **FREEDOM OF INFORMATION (F .O. I. A.)**

1. PURPOSE: The purpose of this policy is to assure compliance with the Freedom of Information Act by all Bay County departments and offices.
2. AUTHORITY: The Bay County Board of Commissioners
3. APPLICATION: All Bay County departments, agencies and offices of Bay County.

**Adopted by the Bay County Employee's
Retirement System Board of Trustees:
October 14, 2014**

**BAY COUNTY
FREEDOM OF INFORMATION ACT (FOIA) POLICY**

Adopted: 10/10/00, Resolution #00-295

This policy was established pursuant to resolution number 2000-280, adopted by the County Commission for Bay County on the 10th day of October, 2000. The policy identifies the procedures that County officials and employees are to follow in processing a request in accordance with Act No. 442 of Public Acts of 1976, as amended (the "Act")

4. Purpose The purpose of this policy is to assure compliance with the Freedom of Information Act by all Bay County departments and offices.
5. Authority The Bay County Board of Commissioners and Act No. 442 of the Public Acts of 1976, as amended, known as the "Freedom of Information Act"
6. Application This policy applies to all departments, agencies and offices of Bay County.
7. Responsibility The County Executive or the Executive's designee shall be responsible for implementing this policy and accepting and processing requests for public records and further for approving or denying said requests pursuant to the statute.
8. Definitions.
 - 5.1 Act. The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.
 - 5.2 FOIA Coordinator. The Bay County Executive or the individual designated by the County Executive, who is responsible for accepting and processing the request for public records as outlined in this Policy and the Act, and who is responsible for approving denials of requests.
 - 5.3 Person. An individual, corporation, organization or other legal entity as modified by the Act.
 - 5.4 Public Body. Bay County and its duly constituted departments, commissions, boards or committees, except as otherwise provided by the Act.

5.5 Words Not Otherwise Defined. Words and phrases contained in this policy shall have the meaning given to them, if any, by the Act.

9. Policy

6.1 It is the policy of Bay County that, consistent with the Act, all persons except those incarcerated in state or local correctional facilities are entitled to full and complete information regarding governmental decision making.

6.2 In accordance with the Act, the Bay County Executive has designated a FOIA Coordinator to act on his or her behalf in accepting and processing written requests for the County's public records, and in approving the same. Due to the time limitations imposed by the Act, the FOIA coordinator may appoint temporary designees as necessary to perform these functions in the absence of the FOIA coordinator.

6.3 All written requests received by any official, department, agency or employee of Bay County shall be stamped with the date of receipt and shall be immediately forwarded to the FOIA Coordinator for processing.

6.4 Within five (5) business days after receiving the written request, the FOIA Coordinator shall do one of the following:

- a. Grant the request.
- b. Deny the request.
- c. Grant the request in part and deny the request in part.
- d. Under unusual circumstances extended for ten (10) more business days the time to respond.

6.5 In addition to conventional mailing or delivery of a written request, a written request may be made by facsimile, electronic mail, or other electronic commission but shall not be deemed to be received by the FOIA Coordinator until one (1) business day after the electronic transmission is made.

6.6 The FOIA Coordinator will keep on file a date stamped copy of all requests and responses, for no less than one year.

10. Records That Must Be Produced.

- 7.1 A request must "describe the public record sufficiently to enable the public body to find the public record." MSA 4.1801(3); MCL 15.233. A written request that fails to describe a public record sufficiently to enable the public body to find the public record, will be denied.
- 7.2 A proper written request can be denied only if it falls within one of the enumerated exemptions listed in the Act, as amended.
- 7.3 If an exemption is used to deny a written request, the specific statutory citation for that exemption will be listed in the denial. All denials must be signed by the Bay County Executive or the Bay County Corporation Counsel, or their temporary FOIA Coordinator designee as provided for within this policy.

11. Fees.

- 8.1 In accordance with the Act, Bay County will charge fees for reproducing requested records; said fee shall be limited to actual mailing cost, and to the actual incremental cost of duplication or publication including labor; the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in Section 14 of the Act, 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. In calculating the cost of labor incurred in duplicating and mailing and the cost of examination, review, separation, and deletion, the County may not charge more than the hourly rate of the lowest paid County employee capable of retrieving the information necessary to comply with the request. Additionally, the County shall utilize the most economical means available for making copies of public records.
- 8.2 The FOIA Coordinator at the time a written request is made may require a good faith deposit from the person requesting the public record or a series of public records if, in the estimation of the FOIA Coordinator, the fee authorized pursuant to this policy and the Act exceeds \$50.00. The deposit shall not be exceed one-half of the total estimated fee.
- 8.3 The fee, as calculated under the Act, may be waived if the FOIA Coordinator determines that waiver or reduction of the fee is in the public interest. Additionally, the first \$20.00 of a fee shall be

waived when responding to an individual who is entitled to information under this Act and who submits an affidavit stating that the requestor is currently receiving public assistance or if not receiving public assistance, stating factually inability to pay the cost because of indigence.

8.4 The Bay County Corporation Counsel or FOIA designee will by mail advise the requestor that they can obtain copies of the records requested by first paying the applicable deposit referred to above.

12. Appeal. If a public body makes a final determination to deny all or portion of a written request, the person making such request may do one of the following at his or her option:

9.1 Submit to the Chairman of the Bay County Commission, for placement on the next regularly scheduled meeting of the Board of Commissioners, a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial; or

9.2 Commence an action in the Circuit Court to compel the County's disclosure of the public records. Said action must be commenced within one hundred eighty (180) days after the FOIA Coordinator's denial or any decision on appeal to the County Commission.

9.3 Within ten (10) days after receiving a written appeal, the County Commission shall do one of the following:

- d. Reverse the disclosure denial.
- e. Issue a written notice to the requesting person upholding the disclosure denial.
- f. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
- g. Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the County Commission shall respond to the written appeal. The County Commission shall not issue more than one notice of extension for a particular written appeal.
- h. For purposes of computation of time, the Board of Commissioners for Bay County is not considered to have received a written appeal until the first regularly scheduled meeting of the Board following submission of the written appeal to the Board Chairman. From the first regularly

scheduled meeting at which the written appeal is received, the Board of Commissioners for Bay County shall have ten (10) business days within which to respond.

13. Circuit Court Costs. If an appeal is taken either from the FOIA Coordinator's final decision or from the decision of the Board of Commissioners for Bay County to appropriate Circuit Court, the matter shall be defended by Bay County Corporation Counsel or appropriate civil counsel retained through the office of Bay County Corporation Counsel.
14. Miscellaneous. If any part of this policy shall be determined to be in violation the Act, such determination shall affect only that portion in violation and the balance of this Policy shall remain in effect.