

Fremont Township, Isabella County

Freedom of Information Act Procedures

Approved and Adopted by the Fremont Township Board, Isabella County Michigan on

April 27, 2010

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Section 1: Definitions

For the purposes of this policy, the following words have the following meanings:

1.1 Advanced Records: Records that cannot be processed unless personnel have specific access or training to prepare or copy the record, separate exempt from non-exempt information, or approve a denial. Any record not in the list of basic records in this policy is considered an advanced record.

Commentary: Access to some records is limited by law or policy, such as: personnel files, records that include social security numbers, or records maintained by a specific official, such as: assessing records, voter registration and election records, or tax records. Specific training may be required to prepare or copy records such as Qualified Voter File reports and other specialized software. Special handling may be required for archival records, and specialized knowledge may be required to identify some records. Some records may include exempt information or may be completely exempt from disclosure, and require a partial or complete denial, such as correspondence, internal memos, closed session minutes, some payroll records, personnel records, law enforcement records, township facility records, township attorney correspondence or invoices. **Note:** These types of records are NOT automatically exempt from disclosure. Each request must be reviewed to determine whether the specific record requested actually includes information exempt from disclosure by the FOIA and whether the record will be subject to a denial.

1.2 Advanced Request: A request for “advanced” records as defined by this policy. Any request that includes records not on the list of “basic” records is considered an advanced request. An advanced request will typically require access to records with limited access, training to prepare the record or to make a copy, training to separate exempt from non-exempt information, or authority to approve a denial. A FOIA Coordinator or Assistant FOIA Coordinator is authorized to process an advanced request or to approve a denial of an advanced request. A FOIA Contact or other person is not authorized to process an advanced request or to approve a denial of an advanced request. See **Section 2: Personnel Authorized to Process FOIA Requirements** on page ____.

Commentary: Specific person(s) must be designated to handle “advanced” FOIA requests. Each township must designate a FOIA Coordinator (MCL 15.236). The FOIA Coordinator may designate other personnel to accept and process requests for the township’s public records, including denials (MCL 15.236). Personnel assigned to handle FOIA requests for advanced records (FOIA Coordinator and Assistant FOIA Coordinators) must know the FOIA exemptions (MCLs 15.243 and 15.243a) and how to apply those exemptions to township records. They must also have authority to access records with exempt information, and must understand and maintain the confidentiality required of certain records.

1.3 Basic Records: Records that are easily identified and accessed, are generally required by law to be prepared and available, and do not involve exempt information. The board (*or FOIA Coordinator/Department Head/other*) may designate other records as “basic,” even though they may involve exempt information, if the board (*or FOIA Coordinator/Department Head/other*) determines it is in the public interest to maintain those records for quick response to common or anticipated requests. A FOIA Coordinator, Assistant FOIA Coordinator, or FOIA Contact is authorized to process a request for basic records.

The township list of records designated “basic” for the purposes of this policy is developed and periodically updated by the board (*or FOIA Coordinator/Department Head/other*) and is attached to this policy at page ____.

Commentary: Some examples of common basic records are:

- Minutes (draft and approved for all public bodies, except for closed session minutes)
- Meeting notices
- Agendas (if prepared in advance)
- Meeting packets (if prepared)
- Budget documents (proposed, adopted, as amended)
- Audit report
- Annual meeting minutes (if held)
- Ordinances
- Annual reports (boards, commissions, task forces, committees, etc.)
- Assessment appraisal cards (if maintained at hall)
- Other records identified in township's FOIA policy

1.4 Basic Request: A request for "basic" records as defined by this policy. A basic request does not require access to records with limited access, does not require additional training to prepare the record or make the copy, and does not involve separating exempt from non-exempt information or a denial. A FOIA Coordinator, Assistant FOIA Coordinator, or FOIA Contact is authorized to process a basic request. See **Section 2: Personnel Authorized to Process FOIA Requirements** on page ____.

1.5 Business Day: Any weekday that is not a Saturday, Sunday, or legal holiday.

1.6 FOIA Coordinator: The person designated by the township board who is responsible for accepting and processing FOIA requests for the township's public records, and who is responsible for approving a denial of a FOIA request under MCL 15.235. The township board or the FOIA Coordinator (*may/will*) designate other persons to act as Assistant FOIA Coordinator or to serve as a FOIA Contact, subject to departmental supervisor's approval *or any applicable statutes or township policies regarding job descriptions, departmental functions, bargaining agreements, pay grades or compensation (specify)*. See **Section 2: Personnel Authorized to Process FOIA Requirements** on page ____.

1.7 FOIA Request Form: The form used to receive and track FOIA requests as periodically adopted and updated by the board (*or FOIA Coordinator/Department Head/other*) and attached at page ____.

1.8 Original Request: The printed ("hard copy") version of any FOIA request that is not received on paper (email, digital file, electronic file, fax received as a digital file, or other non-paper format).

1.9 Request: A writing that asks:

- 1) To inspect, copy, or receive a copy of a public record that is described sufficiently in the request to enable the township to find the public record, or
- 2) For a renewable, six-month subscription to future issuances of a public record that is created, issued, or disseminated on a regular basis.

1.10 Writing: Includes handwriting, typewriting, printing, digital or electronic writing, photostating, photographing, photocopying, and every other means of recording (including letters, words, pictures, sounds, or symbols, or combinations of), and papers, maps, email, faxes, digital or electronic files, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

Section 2: Personnel Authorized to Process FOIA Requests

2.1 FOIA Coordinator (or “Chief” or “Head” FOIA Coordinator)

- i. Accepts and processes basic and advanced FOIA requests
- ii. Approves denial of FOIA requests
- iii. Directs and coordinates the township’s FOIA policies and procedures
- iv. Trains township personnel for FOIA compliance
- v. Provides the township board with information and assistance when a FOIA denial is appealed to the township board or circuit court

2.2 Assistant FOIA Coordinator (or identified by department: Fire Department FOIA Coordinator, Planning Commission FOIA Coordinator, Clerk’s Office FOIA Coordinator, etc.)

- i. Accepts and processes basic and advanced FOIA requests
- ii. Approves denial of FOIA requests

2.3 FOIA Contact

- i. Accepts and processes basic FOIA requests
- ii. Not authorized to process advanced FOIA requests or approval denial of FOIA requests

Commentary: Because the FOIA authorizes more than one person to act as FOIA Coordinator, additional FOIA Coordinators may be designated to assist or substitute for the FOIA Coordinator or to handle FOIA requests for a department or other public body within the township, such as the clerk’s office, fire department, or planning commission. Depending on the township’s administrative organization and needs, it may be appropriate to have multiple FOIA Coordinators with the authority to accept and process FOIA requests and approve denials. It may also be appropriate to train other persons to accept and process FOIA requests without the authority to approve denials. To help identify the different levels of authority and to clarify who has the overall responsibility for the township’s FOIA compliance, it may be useful to establish a “chain of command” using different titles and job descriptions, such as the example given here, including identifying different levels of authority required to access records with limited access due to the confidential nature or security of the records.

Section 3: Receiving FOIA Requests

3.1 All FOIA Requests Must Be in Writing

Any person may make a FOIA request by submitting:

- 1) A Township FOIA Request Form, or
- 2) A letter, fax, email, or any other "writing." (If the township uses an electronic or digital FOIA request procedure, such as an email form or electronic form on a Web site, add that format here.)

3.2 All Digital or Electronic FOIA Requests Are Retained on Paper

Any FOIA request that is not originally on paper (email, digital file, electronic file, fax received as a digital file, or other non-paper format) will be printed and retained on paper. The printed version is the "original" request and will be attached to a FOIA Request Form and retained for at least one year from the date the request was "received."

Commentary: This approach allows the township to comply with any email or electronic document "purge" or retention schedule while complying with the retention requirement for FOIA requests.

3.3 Prepare a FOIA Request Form for All Requests for Records

Township personnel will prepare a FOIA Request Form for all requests. If an original request is submitted by any writing other than the FOIA Request Form, the original request will be attached to the FOIA Request Form.

3.4 Verbal Requests for Records Must Be Transferred to Paper

Except as directed in **Section 9.1 Verbal Requests to Inspect Public Records Will Be Accepted**, township personnel will not respond to a verbal request for a copy of or a subscription to a public record unless the request is transferred to a written request or the FOIA Request Form. (Choose one of the following options to complete this paragraph:

Option A: Township personnel will transfer all verbal requests for a public record to the FOIA Request Form.

Option B: Township personnel will provide a FOIA request form to a person making a verbal request for a public record.)

Commentary: A request for a copy of a record or to inspect a record is not subject to the FOIA requirements or protections unless it is a written request. The township is also better able to track a request and the township's response if it is documented in writing. A person cannot be required to fill out a FOIA request form, but the township does not have to respond to a request if it is not in writing. To promote the spirit of and compliance with the FOIA, township personnel may complete a FOIA request form for the person making the request.

3.5 Encourage FOIA Requests to Be Submitted to FOIA Coordinator Address

The FOIA Coordinator mailing address is: Fremont Township Clerk, 2266 W. Blanchard Rd., Mount Pleasant, MI 48858

3.6 Unauthorized Personnel Forward FOIA Requests to the FOIA Coordinator

All township personnel will direct any FOIA requests to the FOIA Coordinator if the person who received the request is not authorized under **Section 2** to respond to that request.

Section 4: Determining When a Non-Electronic FOIA Request is “Received”

4.1 Non-Electronic FOIA Requests Defined

A non-electronic FOIA request is a letter or other paper request delivered by mail, in person, or by hand.

4.2 Basic Non-Electronic FOIA Requests

A non-electronic basic request is “received” for the purpose of determining FOIA compliance on the day it is delivered to ANY township personnel.

4.3 Advanced Non-Electronic FOIA Requests

A non-electronic advanced request is “received” for the purpose of determining FOIA compliance on the day it is delivered to the FOIA Coordinator or the appropriate Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact for the office responsible for the record(s) requested.

If a non-electronic advanced request is delivered to any township personnel, he or she will deliver it to the FOIA Coordinator or the appropriate Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact for the office responsible for the record(s) requested:

- 1) On the same day if he or she receives it at the office responsible for the record(s) or if it is possible to deliver it to another office responsible for the record(s) on that same day; or
- 2) If the person who receives the request is not located at the office responsible for the record(s), he or she will deliver it to that office no later than the next business day.

4.4 Date-Stamping Non-Electronic FOIA Requests

The month, day, and year will be stamped or written in indelible ink on every non-electronic FOIA request when it is “received” as defined in **Section 3** and **Section 4**.

4.5 Mail Pick-Up and Delivery Will Be Arranged to Comply With This Policy

Township policies regarding mail delivery will be coordinated with this policy to accommodate FOIA compliance.

A. Mail Delivered to Township Facility or Home Office

Mail delivered directly by the postal or other service to a township facility or township personnel’s home office will be distributed (*add “and opened” if that is the township’s policy*) on the same business day that it is delivered.

A basic request delivered directly by the postal or other service to a township facility or township personnel’s home office will be date-stamped and considered “received” the same day it is delivered.

An advanced request delivered directly by the postal or other service to a township facility or township personnel’s home office will be date-stamped and considered “received” the day it is delivered to the FOIA Coordinator or the appropriate Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact for the office responsible for the record(s) requested.

B. Mail Delivered to Post Office Box

A township post office box or other third-party mailbox service will be checked (*specify a day part or time such as "in the morning" or "before 10 a.m." or "before 2 p.m."*) every business day (or: *"every other business day"*). Mail delivered to a post office box or other third-party mailbox service will be delivered to the appropriate township facility or township personnel as soon as possible after it is picked up.

C. Mail Delivered to Private Mailing Address

Township personnel who receive mail not addressed to the township, but addressed to them directly, will deliver any FOIA request no later than the next business day to the FOIA Coordinator or the appropriate Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact for the office responsible for the record(s) requested.

Section 5: Determining When An Electronic FOIA Request is “Received”

5.1 Electronic FOIA Requests Defined

An electronic FOIA requests is fax, email, or other form of electronic or digital transmission.

5.2 Basic Electronic FOIA Requests

An electronic basic request is “received” on the business day following the day the transmission is received on ANY device maintained to receive that form of transmission by the township or township personnel.

Any township personnel who receives a basic request will email or forward it on the same day he or she receives it in the original form, if that form can be emailed or forwarded electronically, to the FOIA Coordinator or any Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact.

If the basic request is not in a form that can be emailed or forwarded electronically, he or she will deliver the request in electronic or digital form on an appropriate portable disk, drive, card or other device or on paper to the office responsible for the record(s) on the same day he or she receives it.

5.3 Advanced Electronic FOIA Requests

An electronic advanced request is “received” the business day following the day the transmission is received on any device maintained to receive that form of transmission by the FOIA Coordinator or the appropriate Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact for the office responsible for the record(s) requested.

If an electronic advanced request is delivered to any township personnel, he or she will email or forward it on the same day he or she receives it in the original form, if that form can be emailed or forwarded electronically, to the FOIA Coordinator or the appropriate Assistant FOIA Coordinator (*or departmental FOIA coordinator*) or FOIA Contact for the office responsible for the record(s) requested.

If the advanced request is not in a form that can be emailed or forwarded electronically, he or she will deliver the request in electronic or digital form on an appropriate portable disk, drive, card or other device or on paper to the office responsible for the record(s) no later than the next business day.

5.4 Date-Stamping Electronic FOIA Requests

Any electronic FOIA request that is not originally on paper (email, digital file, electronic file, fax received as a digital file, or other non-paper format) will be printed on paper, and the paper will be maintained as the “original” request.

The month, day, and year will be stamped or written in indelible ink on the paper “original” of every electronic FOIA request after it is “received” and printed on paper.

Section 6: Responses to FOIA Requests

6.1 FOIA Requests Are Responded to Within Five Business Days

Unless otherwise agreed to in writing by the person making the FOIA request, the township will respond to a request for a public record within five business days after the request is “received” by doing one of the following:

- 1) Granting the request,
- 2) Issuing a written notice to the requesting person denying the request,
- 3) Granting the request in part and issuing a written notice to the requesting person denying the request in part, or
- 4) Issuing a notice extending for not more than 10 business days the period during which the township respond to the request. Only one extension will be issued for a particular request. The 10-business day extension will begin on the first business day after the fifth business day of the initial response period.

A person making a FOIA request may agree in writing to a deadline other than those required by the FOIA. The FOIA Request Form includes a section for the person making the request to agree to a deadline other than those required by the FOIA. If there is any reason to believe that the request may take more than the original five-business-day period, township personnel may ask the person making the request if he or she would like to agree to waive the FOIA deadlines and state a later delivery date on the FOIA Request Form. This is completely optional, and no person can be required to agree to a delivery date later than 15 business days after the request is “received” as a condition of receiving the request.

6.2 Failure to Respond Timely Has Serious Legal Consequences

Failure to respond to a FOIA request within five business days constitutes final determination to deny the request and may subject the township to legal action in circuit court.

Township personnel will make every effort to avoid failing to respond to a FOIA request within five business days.

6.3 Steps to Properly Deny All or Part of a FOIA Request

A written notice denying a public record in whole or in part is the township's final determination to deny the request or portion of that request and may subject the township to legal action in circuit court.

If the FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) denies or approves a denial of a FOIA request for a public record in whole or in part, he or she will issue a written notice to the requesting person.

The written notice will contain:

- 1) An explanation of the basis under the FOIA or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request;
- 2) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the township, if that is the reason for denying the request or a portion of the request;

- 3) A description of a public record or information on a public record that is separated or deleted pursuant to MCL 15.244, if a separation or deletion is made; and
- 4) A full explanation of the requesting person's right to do either of the following:
 - i. Submit to the township board a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial, or
 - ii. Seek judicial review of the denial under MCL 15.240.
- 5) Notice of the right to receive attorneys' fees and damages as provided in MCL 15.240 if, after judicial review, the circuit court determines that the township board has not complied with this section and orders disclosure of all or a portion of a public record.

The township FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) who is responsible for the denial of the request will sign the written notice of denial.

6.4 Steps to Properly Issue a Notice Extending a FOIA Response Period

If the FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) issues a notice extending the period for a response to the request, the notice will specify the reasons for the extension and the date by which the township will do one of the following:

- 1) Grant the request,
- 2) Issue a written notice to the requesting person denying the request, or
- 3) Grant the request in part and issue a written notice to the requesting person denying the request in part.

Section 7: FOIA Request Billing Procedures

7.1 Billable FOIA Request Costs

Unless the document is listed in **Section 7.2 Waived FOIA Request Costs**, the following costs will be charged for responses to all FOIA requests according to the FOIA Fee Schedule adopted and periodically revised by the township board (see attached).

In all cases, township personnel will use the most economical means available to make copies of public records.

“Actual, incremental cost” means the cost to the township over and above the cost to the township if the request had not been made. Overhead costs are not included in an “actual, incremental cost.” (*Select any, all, or none of the following, per the township’s individual policy:*)

A. Copying: (*includes copies requested or made to accommodate a request to inspect*)

- 1) The actual, incremental copying cost to make the cop(ies).
- 2) The labor cost to make the cop(ies), (**Select Option A or Option B**)

Option A: which is the hourly wage of the lowest paid township employee capable of making the copy, as determined for each request.

Option B: which is \$10.50. (*Specify the lowest hourly wage paid to any township employee, if the board wants to use that as a flat hourly wage for all copies*)

Labor costs are charged in 10-minute increments. The hourly wage used to calculate labor costs includes total compensation and benefits.

B. Copying for FOIA Subscription:

- 1) The actual, incremental copying cost to make the cop(ies).

Labor costs are not charged for a copy made to fulfill a FOIA subscription request because the copy is made at the same time the record is issued.

Commentary: A township may choose to charge labor costs for FOIA subscription copies, but because the copies should be made when the record is issued, the cost will usually be too small an increment to charge.

C. Mailing:

- 1) The actual postage/shipping costs will be charged.
- 2) The actual cost of the envelope or mailer will be charged.

D. Separating Exempt From Non-Exempt Information (requires FOIA Coordinator approval):

A fee will not be charged for the cost to search, examine, review, and delete, separate, or redact exempt from non-exempt information unless failure to charge a fee would result in unreasonably high costs to the township because of the nature of the specific request.

The FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) is authorized to determine if a fee will be charged under this section. A FOIA Contact is not authorized to determine if a fee will be charged under this section.

When the FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) determines that a fee will be charged under this section, the FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) will specifically identify the nature of the unreasonably high costs of the specific request on the FOIA Cost Worksheet (see attached).

- 1) Labor cost to separate exempt from non-exempt information, (**Select Option A or Option B**)

Option A: which is the hourly wage of the lowest paid township employee capable of separating the exempt information from non-exempt information, as determined for each request.

Option B: which is \$10.50. (*Specify the lowest hourly wage paid to a township employee capable of separating exempt from non-exempt information, if the board wants to use that as a flat hourly wage for all copies*)

Labor costs are charged in 10-minute increments. The hourly wage used to calculate labor costs includes total compensation and benefits.

7.2 Waived FOIA Request Costs for Specific Types of Records (*Optional*)

(This is optional. In the interest of public access to township records and information or to encourage public feedback on a draft document or plan, a township board may choose to waive all FOIA costs or the cost of certain types of records.)

The township does not charge for copies of (*specify type(s) of records, such as “most recent draft and approved sets of minutes” or “the draft master plan, zoning ordinance, recreation plan,” etc.*).

With the exception of costs waived under **Section 7.3 Costs Waived Due to Indigency of Person Making FOIA Request**, costs can only be waived according to this section. Costs cannot be waived on an individual basis.

7.3 Costs Waived Due to Indigency of Person Making FOIA Request

A public record search will be made and a copy of a public record will be furnished without charge for the first \$20 of the fee for each request to a person who is entitled to information under the FOIA and who submits an affidavit stating either that, at the time the request is submitted, the person is receiving public assistance or is unable to pay the cost because of indigency.

“Indigency” is determined by the township’s poverty guidelines adopted for property tax poverty exemption applications (or “*the federal poverty thresholds annually compiled and published by the Bureau of the Census prior to December 31 of each year*”). See attached Fee Schedule.

7.4 Fifty-Percent Good Faith Deposit for Costs Over \$50

Subject to **Section 7.3 Costs Waived Due to Indigency of Person Making FOIA Request**, if the costs estimated for a specific FOIA request exceed \$50, the person requesting the record(s) must make a good faith deposit before the township will process the request. The deposit will not exceed one-half (50%) of the total fee.

7.5 Unpaid FOIA Requests Are Not Considered When Responding to a Subsequent FOIA Request for Different Records

The unpaid balance of a previous FOIA request cannot be deducted from separate or later FOIA requests for different records submitted by the same person, and they cannot be deducted from any other fees, taxes, charges or other bills paid to the township by that person.

Section 8: Completing A FOIA Request

8.1 Initial Intake

When a FOIA request is “received,” the “original” request is date-stamped according to **Section 4** and **Section 5**. If the “original” request is a FOIA Request form, the date is recorded in the applicable section on the form.

A FOIA Cost Worksheet is prepared and serves as the invoice for billing FOIA costs.

8.2 **Basic Requests and Advanced Requests With No Exempt Information, Denial, or Extension**

The following steps may be completed immediately following a request, but no later than five business days from the time the request is received:

- 1) A copy of (or indicate the numbered or colored part of a multi-part form) the FOIA Cost Worksheet is either given directly to the person making the request or sent to the person making the request by the same method used to submit the request or the most rapid method of communication available.
- 2) The person making the request may choose to amend his or her request based on the cost. The initial five-business day response period is recalculated from when the amended request is considered “received” according to **Section 4** and **Section 5**.
- 3) A 50% good faith deposit required for a specific FOIA request under **Section 7.4**, as invoiced on the FOIA Cost Worksheet, must be paid before the township will prepare that specific request.
- 4) If no 50% good faith deposit is required for a specific FOIA request, the request will be processed and prepared for pick-up or mailing within the initial five-business day response period. The person making the request will be notified within the initial five-business day response period that the request is available for pick-up or mailing. Notice will also be given of the final balance due on the cost if any estimates have been revised.
- 5) The specific FOIA request will be provided or mailed to the person making the request AFTER the balance due as invoiced on the FOIA Cost Worksheet is paid in full.
- 6) A receipt will be given for all paid-in-full FOIA requests.

8.3 Advanced Requests With Exempt Information, Denial, or Extension

- 1) A copy of (*or indicate the numbered or colored part of a multi-part form*) the FOIA Cost Worksheet is either given directly to the person making the request or sent to the person making the request by the same method used to submit the request or the most rapid method of communication available.
- 2) The person making the request may choose to amend his or her request based on the cost. The initial five-business day response period is recalculated from when the amended request is considered "received" according to **Section 4** and **Section 5**.
- 3) A 50% good faith deposit required for a specific FOIA request under **Section 7.4**, as invoiced on the FOIA Cost Worksheet, must be paid before the township will prepare that specific request.
- 4) If no 50% good faith deposit is required for a specific FOIA request, the appropriate written response for an extension, denial, or separation of exempt from non-exempt information is either given directly to the person making the request or sent to the person making the request by the same method used to submit the request or the most rapid method of communication available within the initial five-business day response period.

The person making the request will be notified within the initial five-business day response period or 10-business day extension that the request is available for pick-up or mailing. Notice will also be given of the final balance due on the cost if any estimates have been revised.
- 5) The specific FOIA request will be provided or mailed to the person making the request AFTER the balance due as invoiced on the FOIA Cost Worksheet is paid in full.
- 6) A receipt will be given for all paid-in-full FOIA requests.

8.4 **FOIA Request Forms Filed With FOIA Coordinator**

When a FOIA request has been completed, the FOIA Request Form (*the department/office may retain a copy or part*) is filed with the FOIA Coordinator and retained for at least one year after the date of the request.

If the township has completed its requirements for the request, including copying all requested records and giving notice of any denial, and the person making the request has not paid the balance in full, the township will retain the request, including all copies made for the request, until the earliest of either the date the person pays the balance or one year after the date of the request.

Section 9: Procedures for Public Inspection and Copying of Records

9.1 Verbal Requests to Inspect Public Records Are Accepted

Although a verbal request to inspect records does not initiate FOIA requirements, other statutes, such as MCL 750.492, which covers all public records, and specific laws such as the General Property Act or the Michigan Election Law, require a response to a verbal request. Township personnel may ask a person to put a request to inspect in writing, but it cannot be required as a condition to inspect. For recordkeeping purposes only, township personnel will transfer all verbal requests to inspect a public record to the FOIA Request Form

9.2 Only Pencils Used to Take Notes When Inspecting Public Records

MCL 750.492 specifically prohibits the use of pen and ink for taking notes. Township personnel assisting with inspection of public records must inform any person inspecting records that only pencils, and no pens or ink, may be used to take notes. A person may be required to inspect records at a specified counter or table, and in view of township personnel (*insert township's specific policy or policy for specific departments/offices*).

9.3 Copies May Be Required to Enable Public Inspection of Records

In coordination with the official responsible for the records, the FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*) will determine (*by policy, on a case-by-case basis, or both*) when the township will provide copies of original records, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.

A fee is charged for copies made to enable public inspection of records, based on Section 7 and the FOIA Fee Schedule (see attached).

9.4 Records Cannot Be Removed For Inspection

A person cannot remove books, records, or files from the place the township (*or department/office*) has provided for the inspection.

9.5 Hours and Locations for Public Inspection

(Call 989-866-2512 for an appointment and where inspection will take place. Fremont Township, Isabella County does not have offices. The township clerk will make accommodations for disabilities when considering location of inspection.

Record inspection is available up to four hours per day.

The Freedom of Information Act, (FOIA), MCL 15.231, et seq., gives the public “a right to inspect, copy, or receive copies” of public records. (MCL 15.233) That same section of the FOIA also requires:

“(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.”

The Michigan Penal Code states:

“Any officer having the custody of any county, city, or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his or her office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00. The custodian of said records and files may make such reasonable rules with reference to the inspection and examination of them as shall be necessary for the protection of said records and files and to prevent interference with the regular discharge of the duties of such officer. The officer shall prohibit the use of pen and ink in making copies or notes of records and files in his or her office. No books, records, and files shall be removed from the office of the custodian thereof, except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena *duces tecum* issued therefrom, or for audit purposes ... with the permission of the official having custody of the records if the official is given a receipt listing the records being removed.” (MCL 750.492)

MCL 211.10a, part of the General Property Tax Act, requires that: “All property assessment rolls and property appraisal cards shall be available for inspection and copying during the customary business hours.”

None of these laws require a township to have a township hall. If a township has a hall, the elected officials are not required to maintain an office at the hall, and many township officials maintain home offices. Township officials are not required to hold general office hours (and there are only minimal requirements for specific statutory office hours during the year).

MCL 750.492 requires inspections to be allowed “during the usual business hours,” but it does not require a township to have hall or office hours. If a township or official does not hold regular hours, however, a reasonable effort must be made to arrange a time when the requestor may inspect the records, and the person may spend up to four hours per day. If the records are maintained in a private residence, the official must allow the requestor to review the records in the residence or agree to meet at an appropriate alternate facility, such as the township hall or a local library.

Section 10: Records Maintenance for FOIA Compliance

10.1 Records Are Maintained to Encourage FOIA Compliance

Township personnel will create, develop, organize, maintain, retain and store all township records for easy access and copying.

A. Records With Limited Access

If specific records are required by law or township policy to have limited access, procedures will be developed in coordination with this policy to accommodate access by the appropriate authorized FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*).

B. Records Containing Exempt Information

If specific records contain information exempt from disclosure, procedures will be developed in coordination with this policy to create, develop, organize, maintain, retain and store those records so that exempt information may be omitted, removed, or blacked out (redacted) by the appropriate township personnel or authorized FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*).

C. Basic Records Kept in Home Offices

When basic records are kept in home offices, procedures will be developed in coordination with this policy to accommodate access by the appropriate authorized FOIA Coordinator or Assistant FOIA Coordinator (*or departmental FOIA coordinator*).

Commentary: Consider creating a central FOIA file cabinet, shelving system, or other organized and easily accessible storage system to hold copies of basic records that are kept in home offices or other “remote” township facilities. As township personnel in home/remote offices create or file the original basic records, they should prepare a copy for the central FOIA file. This will ensure that basic FOIA requests can be responded to even when the home office is not accessible due to vacation, illness or other privacy concerns. It may be appropriate to require township departments or boards/commissions that produce records to make an extra copy for a central FOIA file as records produced. An individual township considering this approach should weigh FOIA response considerations against the added cost and duplication of records to determine if this is an appropriate method for FOIA compliance.

10.2 Records Are Retained According to the Record Retention Schedule

Township personnel will retain records according to the applicable General Record Retention Schedules approved by the Michigan Department of History, Arts and Libraries, according to MCL 399.5 (*if the township has developed its own special record retention schedule and had it approved by the Michigan Department of History, Arts and Libraries, substitute the title of that schedule here*).

10.3 Records Are Destroyed According to the Record Retention Schedule

A township record included on the record retention schedule cannot be destroyed except according to the record retention schedule.

10.4 Records Subject to a FOIA Request Cannot Be Destroyed Until Completed

A public record subject to a current FOIA request, will not be destroyed until the FOIA request has been completed or, if any part or all of the FOIA request has been denied, until the time allowed for an appeal of the request to the Circuit Court has passed without an appeal.

Appendices: Sample FOIA Forms

- 1) FOIA Request for Public Records with Cost Worksheet
- 2) Notice to Extend Response Time for FOIA Request with Cost Worksheet
- 3) Notice of Denial of FOIA Request with Appeal Information

Fremont Township Freedom of Information Act Request Cost Worksheet

| | | |
|---|--|---|
| <p>Pursuant to Section 4 of the Michigan Freedom of Information Act, MCL 15.234, the following costs will be charged for responses to FOIA requests, according to the FOIA Fee Schedule adopted and periodically revised by the township board.</p> | | |
| <p>Copying (per copy cost):</p> <p>Copying costs may be charged if a copy of a public record is requested, or if a copy is required to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.</p> <p style="text-align: right;"> Letter (single-sided): .25 cents per page Letter (double-sided): .50 cents per page Legal (single-sided): .45 cents per page Legal (double-sided): .90 cents per page Other: _____ Cost per page: _____ </p> | <p>Number of pages:</p> x _____ = x _____ = x _____ = x _____ = x _____ = x _____ = | <p>Total Cost</p> \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ |
| <p>Labor Cost for Copying (hourly wage):</p> <p style="text-align: right;">Hourly Wage Charged: \$10.50</p> | <p>Number of minutes:</p> x _____ = | <p>Total Cost</p> \$ _____ |
| <p>Mailing:</p> <p style="text-align: right;"> No. 10 Business Envelope: .15 cents 9 x 12 Envelope: .50 cents 10 x 13 Envelope: 1.00 dollar Other: __ cents </p> <p style="text-align: right;"> Postage (select method): \$CurrRate per stamp \$CurrRate per pound \$ _____ per package </p> | <p>Number of envelopes:</p> x _____ = x _____ = x _____ = x _____ = Actual Postage: x _____ = x _____ = x _____ = | <p>Total Cost</p> \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ |
| <p>Labor Cost for Separating Exempt from Non-Exempt Information (hourly wage):</p> <p>Due to the nature of the request, a labor charge may be charged for the search, examination, review, and (if appropriate) the deletion and separation of exempt from non-exempt information as provided in Section 4 of the Freedom of Information Act, MCL 15.234. This fee is being charged because failure to do so would result in unreasonably high costs to the township, specifically:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: right;">Hourly Wage Charged: \$10.50</p> | <p>Number of minutes:</p> x _____ = | <p>Total Cost</p> \$ _____ |
| | Subtotal | \$ _____ |
| Proof or Affidavit of Indigency Submitted | Subtract \$20.00 | \$ _____ |
| | Estimated Cost | \$ _____ |
| Note: Estimated Cost Exceeds \$50.00. Good Faith Deposit of 50% Required <u>Before</u> Request Will Be Processed | 50% Deposit Date Paid: _____ | \$ _____ |
| Note: Request Will Be Processed, But Balance Must Be Paid <u>Before</u> Copies May Be Picked Up, Delivered, or Mailed | Balance Due Date Paid: _____ | \$ _____ |

Fremont Township
Isabella County, Michigan

Fremont Township Clerk , 2266 W. Blanchard Road
Mount Pleasant, MI 48858
Phone (989) 866-2512

Notice to Extend Response Time for FOIA Request

| | | |
|-------------------|-------|-----|
| Name | Phone | |
| Firm/Organization | Fax | |
| Street | Email | |
| City | State | Zip |

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

RE: Request to: Receive copy Inspect record Subscribe to record issued on regular basis
Delivery Method (*upon payment of balance due*): Pick up records in person Mail to address below

Date Request Received: _____ Date of This Response: _____

Record(s) Requested: _____

We are extending the date to respond until _____. (This date can be no more than 15 business days from the date the original request was received by the township.)

If you have any questions regarding this extension, contact _____ at _____.

Reason for Extension:

1. The township needs to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to your request. Specifically, the township must:

2. The township needs to collect the requested public records from numerous field offices, facilities, or other establishments that are located apart from the township office. Specifically, the township must coordinate documents from the following locations: _____

3. Other (describe): _____

Signature of FOIA Coordinator:

Date:

(Revised January 2008)

Fremont Township, Isabella County Freedom of Information Act Request Cost Worksheet

| | | |
|---|---|--|
| <p>Pursuant to Section 4 of the Michigan Freedom of Information Act, MCL 15.234, the following costs will be charged for responses to FOIA requests, according to the FOIA Fee Schedule adopted and periodically revised by the township board.</p> | | |
| <p>Copying (per copy cost):</p> <p>Copying costs may be charged if a copy of a public record is requested, or if a copy is required to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.</p> <p style="text-align: right;"> Letter (single-sided): .25 cents per page Letter (double-sided): .50 cents per page Legal (single-sided): .45 cents per page Legal (double-sided): .90 cents per page Other: _____ Cost per page: _____ </p> | <p>Number of pages: x _____ = x _____ = </p> | <p>Total Cost \$ _____ \$ _____ \$ _____ \$ _____ \$ _____</p> |
| <p>Labor Cost for Copying (hourly wage):</p> <p style="text-align: right;">Hourly Wage Charged: \$10.50</p> | <p>Number of minutes: x _____ =</p> | <p>Total Cost \$ _____</p> |
| <p>Mailing:</p> <p style="text-align: right;"> No. 10 Business Envelope: .15 cents 9 x 12 Envelope: .50 cents 10 x 13 Envelope: 1.00 dollar Other: ___ cents </p> <p style="text-align: right;"> Postage (select method): \$ _____ per stamp \$ _____ per pound \$ _____ per package </p> | <p>Number of envelopes: x _____ = x _____ = x _____ = x _____ =</p> <p>Actual Postage: x _____ = x _____ = x _____ =</p> | <p>Total Cost \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____</p> |
| <p>Labor Cost for Separating Exempt from Non-Exempt Information (hourly wage):</p> <p>Due to the nature of the request, a labor charge may be charged for the search, examination, review, and (if appropriate) the deletion and separation of exempt from non-exempt information as provided in Section 4 of the Freedom of Information Act, MCL 15.234. This fee is being charged because failure to do so would result in unreasonably high costs to the township, specifically:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: right;">Hourly Wage Charged: \$10.50</p> | <p>Number of minutes: x _____ =</p> | <p>Total Cost \$ _____</p> |
| | Subtotal | \$ _____ |
| Proof or Affidavit of Indigency Submitted | Subtract \$20.00 | \$ _____ |
| | Estimated Cost | \$ _____ |
| Note: Estimated Cost Exceeds \$50.00. Good Faith Deposit of 50% Required <u>Before</u> Request Will Be Processed | 50% Deposit Date Paid: _____ | \$ _____ |
| Note: Request Will Be Processed, But Balance Must Be Paid <u>Before</u> Copies May Be Picked Up, Delivered, or Mailed | Balance Due | |
| | Date Paid: _____ | \$ _____ |

Fremont Township
Isabella County, Michigan
Fremont Township Clerk , 2266 W. Blanchard Road
Mount Pleasant, MI 48858
Phone (989) 866-2512

Notice of Denial of FOIA Request

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

| | | |
|-------------------|-------|-----|
| Name | Phone | |
| Firm/Organization | Fax | |
| Street | Email | |
| City | State | Zip |

RE: Request to: Receive copy Inspect record Subscribe to record issued on regular basis

Date Request Received: _____ Date of This Response: _____

Record(s) Requested: _____

All or part of your request for records has been denied. Please refer to this form for an explanation. If you have any questions regarding this denial, contact _____ at _____.

Reason for Denial:

1. This item is exempt from disclosure under FOIA Section 13, Subsection (*insert number*), because: _____

2. This item does not exist under the name provided in your request or by another name reasonably known to the township. A certificate that the public record does not exist under the name given is enclosed. If you believe this record does exist, provide a description that will enable us to locate the record: _____

3. A portion of the requested record had to be separated or deleted as it is exempt under FOIA Section 13, Subsection (*insert number*), because: _____

A brief description of the information that had to be separated or deleted: _____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the township board or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If you are successful in asserting the right to inspect or to receive a copy of a public record or a portion of a public record in court, the court will award reasonable attorney fees, costs, and disbursements. If you prevail in part of your action, the court may in its discretion award reasonable attorney fees, costs, and disbursements or an appropriate portion of those attorney fees, costs, and disbursements. (See back of this form for additional information on your rights.)

Signature of FOIA Coordinator:

Date:

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240 Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 an action in circuit court under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, 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 under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 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.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997