

**COMMUNITY MENTAL HEALTH AND
SUBSTANCE OF ABUSE SERVICES OF ST. JOSEPH COUNTY
FREEDOM OF INFORMATION ACT
POLICY, PROCEDURE AND GUIDELINES**

- I. Purpose:** The purpose of the Michigan Freedom of Information Act (FOIA), Act 442 of 1976, MCL 15.231 *et seq.*, is to provide for public access to non-exempt Public Records of Public Bodies. Under FOIA, members of the public are entitled to review and/or copy Public Records.
- II. Definition of a Public Record:** A Public Record is defined as a writing prepared, owned, used, in the possession of, or kept by a Public Body in the performance of an official function, from the time it is created. Public Records do not include computer software.
- III. Additional Definitions:**
- a. "Public Body" means Community Mental Health and Substance of Abuse Services of St. Joseph County ("CMHSAS-SJC").
 - b. "Requestor" means the party that has submitted a request to the Public Body for Public Records.
- IV. Records Exempt from Disclosure:** Certain records do not have to be disclosed and therefore cannot be obtained with a FOIA request. For a complete and official list of records exempt from disclosure, see M.C.L. 15.243.

Examples of records that will not be disclosed include:

- a. Medical information protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- b. Records and information exempt from disclosure by statute, such as birth, marriage, death and divorce records;
- c. Information of a personal nature that could clearly be an unwarranted invasion of an individual's privacy;
- d. Trade secrets or commercial or financial information voluntarily provided to the agency for use in developing governmental policy;
- e. Pending public bids to enter contracts;
- f. Certain investigative records collected for law enforcement purposes, but only to the extent that disclosure would:
 - i. Interfere with law enforcement proceedings;
 - ii. Deprive a person of the right to a fair trial or impartial administrative adjudication;

- iii. Constitute an unwarranted invasion of privacy;
- iv. Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source;
- v. Disclose law enforcement investigative techniques or procedures;
- vi. Endanger the life or physical safety of law enforcement personnel.
- g. Records subject to the attorney-client privilege;
- h. Records subject to the physician-patient privilege;
- i. Medical counseling or psychological facts which would reveal an individual's identity;
- j. Social security numbers;
- k. Appraisals of real property to be acquired by a Public Body;
- l. Records of law enforcement communication codes, or plans for deployment of law enforcement personnel if disclosure would prejudice law enforcements ability to protect the public.

If a Public Record contains both exempt and non-exempt material, the Public Body must separate the exempt from the non-exempt material. When a portion of a document is designated exempt, the Public Body must generally describe the material exempted to the best of its ability unless the description would reveal the contents of the exempt information.

V. Requests for Public Records:

- a. All requests must be in writing and should be addressed to the FOIA coordinator.
- b. Receipt date of electronic requests: FOIA requests sent by fax, email or other electronic method are not deemed to be received by the Public Body until one (1) business day after transmission. In the event a FOIA request by email is sent to the SPAM filter or junk-mail folder, it will not be deemed received until one (1) day after the Public Body becomes aware of the message. The Public Body must keep a record of the date a written request is delivered to its SPAM or junk-mail and the date it is discovered.
- c. The request must provide a description of the record being requested. Reasonable efforts must be made to ascertain what Public Records are being requested.
- d. Requestors may request documents on non-paper physical media, email, or other electronic format. The public entity does not have to comply with the request for non-paper media if it lacks the technology to do so.

VI. Responding to a Request:

- a. A written response is required for all requests within five (5) business days from the date of receipt. The response must do one of the following:
 - i. Grant the request;
 - ii. Deny the request;
 - iii. Grant the request in part, and deny the request in part; or
 - iv. Issue a written notice extending the time for response to the request by not more than ten (10) business days. Only one (1) extension per request is allowed.
 1. Extension notices must specify:
 - A. The reason for the extension; and
 - B. Date by which the Public Body will respond.
- b. Requestors must be allowed a reasonable opportunity for inspection of the records during usual business hours or copies must be supplied.
- c. A copy of all requests must be kept on file for one (1) year.

VII. FOIA Request Fees:

- a. Mailing Costs: Limited to actual costs of the most economical manner of shipping. No charges for expediting or insurance are permitted unless specifically agreed to, in writing, by the Requestor.
- b. Copy Costs: Limited to actual cost of duplication, not including labor. The most economical means must be used, including double-sided copies, if available. The fee itemization form must state the price per sheet and total cost. Each 8½" x 11" or 8½" x 14" sheet of paper costs \$0.10
- c. Labor Costs:
 - i. Cost for Searching, Locating and Examining Records:
 1. Fees under this section should not be charged unless failure to charge a fee would result in unreasonably high costs to Public Body. If fees are charged under this section, the Public Body must specifically identify the nature of the unreasonably high costs.
 2. Limited to costs directly associated with searching for, locating and examining records in order to respond to a request;
 3. Fees must be charged in increments of 15 minutes, with partial increments rounded down;

4. Max hourly wage: Wage of the lowest-paid employee at the Public Body capable of searching, locating, and examining Public Records, regardless of whether that person is available or actually performs the work.
- ii. Cost for Reviewing, Separating, and Deleting Exempt Information:
1. Fees under this section should not be charged unless failure to charge a fee would result in unreasonably high costs to Public Body. If fees are charged under this section, the Public Body must specifically identify the nature of the unreasonably high costs.
 2. Fees must be charged in increments of 15 minutes, with partial increments rounded down;
 3. The cost of redacting documents may not be charged if the Public Body has previously redacted the same Public Record and the redacted version is still in the Public Body's possession;
 4. Max hourly wage: Wage of lowest-paid employee at the Public Body capable of reviewing, separating, and deleting exempt information, regardless of whether that person is available or actually performs the work;
 5. Contract labor may be used for this purpose. The fee for contract labor is calculated the same way as employee labor and may not exceed the wage of the lowest-paid employee of the Public Body capable of reviewing, separating, and deleting exempt information. The name of the contract person or firm must be stated on the fee itemization form.
 - A. Total labor costs for contract labor may not exceed 6 times the state minimum hourly wage determined under section 4 of the Workforce Opportunity Wage Act, MCL 408.411 *et seq.*
- iii. Cost for Duplication or Publication:
1. Includes making paper and non-paper copies;
 2. Fees must be charged in increments of 15 minutes, with partial increments rounded down;
 3. Max hourly wage: Wage of lowest-paid employee of the Public Body capable of duplication or publication, regardless of whether that person is available or actually performs the work.
- iv. Cost for Fringe Benefits:

1. A multiplier of 50% may be added to labor costs for searching, locating, examining, reviewing, separating, deleting exempt information, duplication and publication;
 2. A line item clearly noting the percentage must be stated on the fee itemization form;
 3. The Public Body may not charge more than the actual cost of the fringe benefits;
 4. Overtime wages shall not be used in calculating the cost of fringe benefits.
- v. Overtime:
1. Overtime may not be used in the calculation of labor costs unless specifically agreed to, in writing, by the Requestor.
- d. Costs of Non-Paper Records:
- i. Costs are limited to the actual and most reasonable cost of computer discs, tapes, or other digital or similar media.
- e. This fee structure does not apply to Public Records prepared under an act or statute specifically authorizing the sale of those Public Records to the public, or if the amount of the fee for providing a copy of the Public Record is otherwise specifically provided for by law.

VIII. Guidelines and Procedure for Requiring a Deposit:

- a. A deposit may be required if the estimated fee for requested records will exceed \$50.00. The deposit may not exceed one-half (1/2) of the total fee estimate. Any request for a deposit must include a detailed itemization of the estimated fee. The response must also contain a good-faith non-binding estimate of the amount of time it will take the Public Body to comply with the request.
- b. If a Requestor has failed to fully pay for a previous request, the Public Body may require a 100% deposit for a later request if **all** the following apply:
 - i. The final fee for the prior written request was not more than 105% of the estimate;
 - ii. The Public Records requested were made available, contained the information being sought, and are still in the Public Body's possession;
 - iii. The Public Body answered in the required timeframe;
 - iv. Ninety (90) days have passed since the Public Body notified the individual in writing that the Public Records were available for pick-up or mailing;
 - v. The Requestor is unable to show proof of payment; and

- vi. The Public Body has calculated a detailed itemization that is the basis for the current request.
- c. The Public Body may not require a 100% deposit as above in subsection b. if the Requestor:
 - i. Produces proof of payment; or
 - ii. Pays in full for the prior request; or
 - iii. Three hundred sixty-five (365) days have passed since the Requestor made the request that was not paid for.

IX. Discounts with Proof of Indigence:

- a. A person requesting Public Records may have the first \$20.00 of fees waived if he/she produces an affidavit stating:
 - i. He/She is indigent and receiving public assistance; or
 - ii. He/She is indigent and stating facts showing an inability to pay costs due to indigency.
- b. Discounts must be fully noted on the fee itemization form.
- c. A Requestor may be ineligible for a discount if:
 - i. The Requestor previously received discounted copies of Public Records from the same Public Body two (2) times during the calendar year; or
 - ii. The Requestor requests documents in conjunction with another party that is not indigent. A written statement attesting that the request is not in conjunction with another party may be required by the Public Body.
- d. If a request for indigency discount is denied, the reason must be specifically stated in the written response to the FOIA request.

X. Process for Denying a Request:

- a. All responses to a request must be in writing. A denial must contain:
 - i. Information to explain the denial:
 - 1. An explanation with reference to the section of FOIA or other statute that supports the denial, if that is the basis for the denial;
 - 2. A certificate that the Public Record does not exist under the name given by the Requestor or any other name reasonably known by the Public Body; or
 - 3. A description of a Public Record or information on a Public Record that is separated or deleted, pursuant to FOIA.

- ii. A full explanation of the Requestor's rights to file a written appeal to the Public Body or seek judicial review.
- iii. Notice of the Requestor's right to receive attorneys' fees and damages if a court determines that the Public Body has not complied with FOIA and orders disclosure of all or part of a Public Record;
- iv. Be signed by the FOIA coordinator.

XI. Failure to Timely Respond to a Request:

- a. If a request is not timely answered and:
 - i. the failure to answer is willful and intentional, or
 - ii. the request conveys in the first 250 words that it is a FOIA request (using the words, characters, or abbreviation "freedom of information," "information," "FOIA," "copy" or other appropriate reference). The reference could be on the front of an envelope, email subject line, letter, facsimile cover, etc.

Then:

- b. Labor costs must be reduced by 5% for each day the response exceeds the time limit for answering, up to 50%. Charge reductions must be fully noted on the fee itemization form.
- c. A failure to respond to a request will be deemed a denial of the request if either of the above criteria are responsible for the failure to respond.

XII. Process for Appealing the Denial of a Request:

- a. Appeals to the Board of CMHSAS-SJC:
 - i. If a person seeks appeal for the denial of a request for Public Records from the public entity:
 - 1. All appeals must specifically state the word "appeal"; and
 - 2. Identify the reason why the denial should be reversed; and
 - 3. Appeals must be sent to the Board of CMHSAS-SJC.
 - ii. Within ten (10) days after receiving a written appeal, the Board of CMHSAS-SJC must:
 - 1. Reverse the disclosure denial;
 - 2. Issue a written notice upholding the denial; or
 - 3. Reverse the denial in part and uphold the denial in part.

iii. Under “unusual circumstances,” the Public Body may issue a notice extending the period for a response to the appeal by not more than ten (10) business days. Only one (1) extension may be issued.

1. “Unusual circumstances” means:

A. There is a need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct Public Records pursuant to a single request; or

B. The need to collect the requested Public Records from numerous filed offices, facilities, or other establishments which are located apart from the particular office receiving and processing the request.

iv. Date of receipt: The Board of CMHSAS-SJC is not deemed to receive an appeal until the first regularly scheduled meeting of Board following submission of the appeal.]

v. If the Board of CMHSAS-SJC fails to respond to the appeal or denies the appeal, the Requestor may seek judicial review.

b. Judicial Appeals:

i. Civil actions can be commenced in the circuit court for the county where the Public Record or office of the Public Body to sustain the denial is located.

ii. Appeals must be filed within one hundred eighty (180) days after the date of the denial.

iii. If the requesting party prevails, the court must award reasonable attorneys’ fees, costs and disbursements. If the Public Body prevails, the court may, in its discretion, award all or part of its reasonable attorneys’ fees, costs and disbursements.

XIII. Process for Appealing Fees:

a. If a Requestor believes he/she has been charged a fee that is larger than that allowed by FOIA, he/she must first seek an appeal from the Board of CMHSAS-SJC.

b. Appeals to the Board of CMHSAS-SJC:

i. Appeals must:

1. Be in writing;

2. State the word “appeal”;

3. Identify how the required fee exceeds the amount permitted by FOIA;

4. Be addressed to the Board of CMHSAS-SJC.
- ii. Within ten (10) business days after receiving a written appeal, the Board of CMHSAS-SJC must:
 1. Waive the fee;
 2. Reduce the fee and issue a written determination explaining the reduction. Reductions in fees must be based on the requirements of FOIA. The determination must also include a certification from the Board of CMHSAS-SJC that states that the determination is accurate and the fee amount complies with CMHSAS-SJC publicly available FOIA policies and procedure;
 3. Uphold the fee and issue a written determination explaining the specific basis under FOIA supporting the fee. The determination must also include a certification from the Board of CMHSAS-SJC that states that the determination is accurate and the fee amount complies with CMHSAS-SJC publicly available FOIA policies and procedure.
 - iii. Date of receipt: The Board of CMHSAS-SJC is not deemed to receive an appeal until the first regularly scheduled meeting of Board following submission of the appeal.
- c. Judicial Appeals:
- i. A Requestor may only seek judicial review for a FOIA fee he/she believes to be in excess of that allowed by FOIA if:
 1. The Board of CMHSAS-SJC fails to respond to his/her written appeal;
 2. He/She disagrees with the determination of the Board of CMHSAS-SJC.
 - ii. Actions must be commenced within forty-five (45) days of receiving the fee notice, or after the denial of an appeal by the Board of CMHSAS-SJC.
 - iii. Civil actions can be commenced in the circuit court for the county where the Public Record or office of the Public Body is located.

***Disclaimer:** This Freedom of Information Act Policy, Procedure and Guidelines is for information purposes only. To the extent that anything included in this Policy, Procedure and Guidelines may be or could be construed as inconsistent with the law, the law will control CMHSAS-SJC's responsibilities under the Freedom of Information Act.*
