



OTSEGO COUNTY FREEDOM OF INFORMATION ACT POLICY

A. Background.

1. The Freedom of Information Act (FOIA, hereafter referred to as the "Act" or "Act 442") became effective on April 13, 1977 in the State of Michigan.
2. Quoting from this Act: "It is the public policy of this State that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the Act. The people shall be informed so that they may fully participate in the democratic process."

B. Definitions.

1. Public Body. Otsego County is a "public body" under the Act and as such, is subject to the requirements of the Act. The Act, however, exempts the Judiciary, including the office of the County Clerk and the employees thereof when acting in the capacity of Clerk to the Circuit Court, from the definition of Public Body.
2. Public Record. A writing prepared, owned, used, in the possession of or retained by a public body in the performance of an official function. The Act separates public records into two classes:
 - a. Those which are exempt from disclosure (see below).
 - b. All others, which are subject to disclosure under the Act.
3. Writings. Means handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording, including letters, words, pictures, sounds or symbols, or combinations thereof, and papers, maps, 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.

C. General.

1. A person may make written or oral request for information under the "Act" to the individual who keeps or maintains records so that the person can inspect, copy or receive copies of said information.
2. It is recognized that the County organization is composed of numerous departments, some of which are headed by Elected Officials (who have certain specific statutory requirements) and some of which are headed by appointed Department Heads (who have certain procedural and policy requirements).
3. It is the intent of this policy to summarize the requirements of the Freedom of Information Act (here referred to as the "FOIA") for all County departments and to provide guidelines for all County departments relative to the County's responsibility to comply with the provisions, spirit and intent of the FOIA.
4. Approval / Denial Authority. The following County officials are authorized as the

approval/ denial authority for FOIA requests for their respective segment(s) of the County organization (*Note: in carrying out this authority, the below listed individuals assume the mantle of the term "County" as it is used hereafter in this section*):

<u>Official</u>	<u>Scope of Authority</u>
County Clerk	All public records maintained by the Clerk's office including records maintained by the General Accounting Office except those judicial records maintained in the role as Clerk to the Circuit Court.
County Treasurer	All public records maintained by the Treasurer's office.
County Register of Deeds	All public records maintained by the Register of Deeds office.
Trial Court Judges	All non-judicial public records maintained by the Court including non-judicial records maintained in the offices of the Friend of the Court, Family Counseling, Community Corrections and Public Defender.
Prosecutor	All non-judicial public records maintained by the Office of the Prosecutor.
Sheriff	All non-judicial public records maintained by the Sheriff's Department.
County Administrator	All public records maintained in all other County administrative offices: Land Use Services, Animal Control, Emergency Management, Equalization/GIS, Human Resources, Finance, Bus, Airport, Building & Grounds as well as records in support of County Commissioners. Note: MSU Extension Office FOIA requests are governed by MSU policies and procedures. .

D. Procedures.

1. The County must determine whether the records that have been requested are in existence.
 - a. The Act does not require the County to make or prepare any particular record which it has not already created.
 - b. The Act does not require the County to create a compilation, summary or report for a requesting party.
 - c. The non-existence of a document does not excuse the obligation of the County to respond to a request for information under the Act, but it does justify the denial of such a request.
2. The County must determine whether the items requested are exempt from disclosure.
 - a. In making this determination, the County is prohibited from considering:

- 1.) The requestor's identity.
 - 2.) Speculation upon the purpose for which the information will be used.
- b. The County is exempt from disclosure of public records under the Act if:
- 1.) the information is of a personal nature where the public disclosure of which would constitute a clearly unwarranted invasion of an individual's privacy.
 - 2.) the information pertains to investigation records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - (a) Interfere with law enforcement proceedings.
 - (b) Deprive a person of the right to a fair trial or an impartial administrative adjudication.
 - (c) Constitute an unwarranted invasion of personal privacy.
 - (d) Disclose the identity of a confidential source or disclose confidential information furnished only by a confidential source.
 - (e) Disclose law enforcement investigative techniques or procedures.
 - (f) Endanger the life or physical safety of law enforcement personnel.
 - 3.) the information, which if disclosed, would prejudice the County's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted because of a crime or admitted because of a mental disability, unless the public interest in disclosure under this Act outweighs the public interest in non-disclosure.
 - 4.) the information is contained in records specifically described and exempted from disclosure by statute.
 - 5.) the release of the information would prevent the County from complying with 20 USC (pertaining to School Boards).
 - 6.) the information relates to information which is furnished by the County to a public officer or public body in connection with the performance of duties of that public officer or public body.
 - 7.) the information consists of trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy, if:
 - (a) The information is submitted upon a promise of confidentiality by the County.
 - (b) The promise of confidentiality is made by a County Official who is authorized to grant confidentiality at the time the promise is made.
 - (c) A description of the information is recorded by the County within a reasonable time after it has been submitted, maintained in a central place by the County and made available on request. This provision does not apply to

information that is submitted as required by law or as a condition of receiving a contract, license or other benefits from the County.

- 8.) the information or records are subject to attorney-client privilege.
- 9.) the information or records are subject to the physician-patient, psychologist-patient, minister/priest/Christian Science Practitioner-client or other privilege recognized by federal or state statute or court rule.
- 10.) the information is a bid or a proposal by a person to enter into a contract or agreement with the County, until such time for the public opening of such bids or proposals, of if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.
- 11.) the information is an appraisal of real property to be acquired by the County until:
 - (a) An agreement is entered into.
 - (b) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- 12.) If the information is test questions or answers, scoring keys and other examination instruments or data used to administer a licensing program, public employment or academic examination, unless the public interest in disclosure under the Act outweighs the public interest in non-disclosure.
- 13.) the information is medical, counseling or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by disclosure.
- 14.) the information is notes or communications within the County or between the County and other public bodies of an advisory nature to the extent that it covers other than purely factual materials and are preliminary to a final determination of policy or action. Under this exemption, it must be shown that the public interest in encouraging frank communications between officials and employees of the County clearly outweighs the public interest in disclosure. (Further information: Section 8(h) of Act 267 of PA 1976, Section 15.268 MCL).
- 15.) the information is law enforcement communications codes or plans for deployment of law enforcement personnel which, if disclosed, would prejudice the County's ability to ensure the public safety unless the public interest in disclosure of this information under the Act outweighs the public interest in non-disclosure.
- 16.) the information would reveal the exact location of archeological sites.
- 17.) the information is testing data developed by the County in determining whether bidders' products meet County specifications if disclosure of this data would reveal that only one bidder has met those

specifications (shall not apply after one year has elapsed after the testing was completed).

- 18.) the information is relative to a campaign committee that receives money from a State campaign fund.
 - 19.) the information is from Sheriff's Department records where, unless the public interest in disclosure outweighs the public interest in non-disclosure, the release of which would do any of the following:
 - (a) Identify or provide the means of identifying a person as a law enforcement officer, agent or an informer.
 - (b) Identify or provide the means of identifying an undercover agent or plainclothes officer as a law enforcement officer or agent.
 - (c) Disclose special skills that a law enforcement officer or agent may have.
 - (d) Disclose the personal address or telephone numbers of law enforcement officers or agents or of their family members and relatives.
 - (e) Disclose operational instructions for law enforcement officers or agents.
 - (f) Reveal the contents of staff manuals that are provided for law enforcement offices or agents.
 - (g) Endanger the life or safety of law enforcement officer or agent or their families or their relatives.
 - (h) Endanger the life of persons who furnish information to law enforcement officers.
 - (i) Disclose the personnel records of the Department.
 - (j) Identify or provide the means of identifying residences which the Department has been requested to check in the absence of the owners or tenants.
3. The County must separate exempt from non-exempt material.
- a. If a public record contains material that is not exempt as well as material which is exempt under subsection 2 (above), the exempt material shall be separated from the non-exempt material and the non-exempt material shall be made available for examination and for copying.
 - b. Any new records that are designed should be developed so that the FOIA exempt material is readily separable from the non-exempt material.
4. As a public body, the County must:
- a. Permit the requester a reasonable opportunity for inspection and examination of public records.
 - b. Furnish reasonable facilities for making abstracts from public records during usual business hours while at the same time taking reasonable steps to prevent excessive interference with the discharge of County functions.
 - c. Apply the provisions cited in this step to all material except that determined to be exempt from disclosure in subsection 2, above.
 - d. Allow the requester to subscribe to future issuances of public records which

are created, issued or disseminated on a regular basis. This "subscription" shall be valid for a period of 6 months and shall be renewable at the request of the subscriber. *Note: as referred to previously, the County is not required to make a compilation, summary or report of the information for a requester.*

5. FOIA fee structure.
 - a. Fees are not mandated but are permissible by law.
 - b. Fees are limited to:
 - 1.) Actual incremental costs for duplication of records, including labor associated with the reproduction process.
 - 2.) Actual mailing costs.
 - 3.) Actual incremental costs of labor for search, examination, review or deletion of exempt material from non-exempt material.
 - c. The most economical means to provide public record information to the public must be used.
 - d. The cost of labor is determined by the hourly wages of the lowest paid, full-time permanent clerical employee of the employer who would normally be involved in FOIA work.
 - e. Fees may be waived on a case by case basis if the County believes it is in the best interest of the public.
 - f. If, at the time of the request, it appears that the fee will exceed \$50.00, a deposit, not to exceed one-half (½) the projected total cost, may be requested.
 - g. Indigency: The first \$20.00 of fees must be waived when the requester submits a notarized affidavit that states that he/she is receiving public assistance or gives facts showing the inability to pay because of the indigence.
 - h. When responding to FOIA requests for which a fee will be charged, the County will generally advise the requester in writing when his/her material is ready for pickup, what the total fee is and then establish an appropriate time for the requester to receive his/her material and pay the required fee. The intent is to avoid mailing and billing processes which add additional time delays and costs.
6. Time allotted for compliance.
 - a. Not more than five (5) business days following receipt of the request, unless otherwise agreed to in writing. (Note: Sundays and legal holidays are the only non-business days considered under this Act; Saturday is considered a business day under the Act.)
 - b. Under extremely unusual circumstances, the County may issue a written (one time only) notification to the requester which extends the five day response period for an additional ten business days. Unusual circumstances means one or a combination of the following as they pertain to the proper processing

of an FOIA request:

- 1.) The need to search for, collect or appropriately examine/review a voluminous amount of separate and distinct public records pursuant to a single request that cannot be accomplished within the allotted five-day time frame given due consideration to the number of employees available to perform this additional work and the amount of regular work that is required in the particular office.
- 2.) The need to collect the requested public records from numerous field offices, facilities or other satellite locations which are located at a distance from the office receiving or processing the FOIA request.

7. County response to an FOIA request.

- a. When the County receives an FOIA request, it must respond one of the following ways:
 - 1.) Granting the request in total.
 - 2.) Issuing, to the requester, a written denial of the request in total.
 - 3.) Granting the request in part and issuing, to the requester, a written denial for the remaining portion of the request.
- b. Failure to respond as provided above constitutes a liability on the part of the County for future judgments against it.
- c. A written denial (total or in part) constitutes the final determination on the part of the County and shall include the following:
 - 1.) An explanation of the basis (under the Act or statute) for disclosure exemptions cited, if applicable.
 - 2.) A certification statement that the public record requested does not exist, if applicable.
 - 3.) A description of the public record which is separated or deleted as exempt, if applicable.
 - 4.) A full explanation of the requester's right to seek judicial review, including notification of the right to receive attorney's fees and damages, as outlined below:
 - (a) If the County denies a FOIA request, the requester may seek action in Circuit Court to compel the County to disclose requested public records. The burden is on the County to sustain its denial and the Court, on its own, may view pertinent public records in private before reaching a decision.
 - (b) A court action under this section arising from the denial of an oral request may not be commenced unless the requester confirms the oral request in writing not less than five days before the commencement of the action.
 - (c) Actions under this section are normally assigned for argument

at the earliest practicable date and are expedited in every reasonable manner.

- (d) When the requester prevails in an action under this section, the County may become liable for all or part of reasonable costs (such as attorney fees, etc.) on the part of the requester.

- (e) If the Court finds that the County capriciously and arbitrarily violated the Act by refusing or delaying in the disclosure of material from the public record, the Court may award punitive damages up to \$500.00 to the requester to be assessed against the County.
 - d. The County Official designated as responsible (see above) for FOIA request approval or denial shall sign the written notice of the denial.
 - e. If the County issues a notice extending the period for a response to a FOIA request, the notice shall set forth the reasons for the extension and the new date by which the County will do one of the following:
 - 1.) Grant the request.
 - 2.) Deny the request in writing.
 - 3.) Grant the request in part and deny the request in part in writing.
 - f. If the County makes a final determination to deny a FOIA request in whole or in part, the requester may then commence action in Court as described above.
8. The requester may appeal an FOIA denial:
- a. Where a request has been denied, the requester may go to the Circuit Court where the record is located or where the requester resides and seek relief from the denial.
 - b. The burden of proving the need for exemption to the Act remains with the County.
 - c. See step 7 above for more information.