

CMHSAS-SJC
FREEDOM OF INFORMATION ACT
PUBLIC SUMMARY

This Summary is to help you file a Freedom of Information Act Request, understand the response from the Public Body, and know your appeal rights.

- 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 CMHSAS-SJC.
 - b. "Requestor" means the party (you) that has submitted a request to the Public Body for Public Records.
- XIV. Records Exempt from Disclosure:** Some records do not have to be disclosed by a Public Body and therefore, cannot be obtained with a FOIA request. For a complete and official list of records that Public Bodies are not required to disclose, 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;
- 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.

Note: Some Public Record may contain both material that must be disclosed (non-exempt) and material that does not have to be disclosed (exempt). If so, the Public Body must separate the exempt from the non-exempt material. When a portion of a document is designated exempt, the Public Body will generally describe the information that has been exempted unless a description would reveal the contents of the exempt information.

IV. Procedure for Requesting a Public Record:

- a. All requests must be in writing and addressed to:
 - i. CMHSAS-SJC
Attn: FOIA Coordinator
677 E. Main Street
Centreville, Michigan 49032
tcropper@stjoecmh.org
- b. Your request must provide as specific of a description of the record being requested as possible.
- c. There are fees associated with the copying of records. The Public Body will provide an itemized summary of these charges.
- d. Receipt date of electronic requests: FOIA requests sent by fax, email or other electronic method are not considered to be received by the Public Body until one (1) business day after it is sent. In the event a FOIA request by email is sent to the SPAM filter or junk-mail folder, it will not be considered 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.

V. Understanding the Response to Your Request:

- a. The Public Body will respond to your request, in writing, within five (5) business days from the date of receipt. The response will either:
 - 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 will explain:

- A. The reason for the extension; and
 - B. State a date by which the Public Body will respond to your request.
- b. When a request is granted, the public entity may allow you to inspect the documents at the location of the Public Body during usual business hours. Alternatively, the Public Body may provide copies of the documents to you.

VI. FOIA Request Fees:

- a. There is a cost for requesting documents through FOIA. These fees are explained in this section. The total fees for processing your FOIA request will be provided to you on an itemized form.
- b. Mailing Costs: The Public Body will mail you documents in the most economical method available. No charges for expediting or insurance are permitted unless specifically agreed to, in writing, by you.
- c. Copy Costs: Each 8½” x 11” or 8½” x 14” sheet of paper costs \$0.10. Double sided copies will be used when possible. This cost does not include labor.
- d. Labor Costs:
 - i. Costs 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. This cost is limited to costs directly associated with searching for, locating and examining records in order to respond to your request;
 - 3. Fees will be charged in increments of 15 minutes, with partial increments rounded down;
 - 4. Max hourly wage: The 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, will be used.
 - ii. Costs 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 will be charged in increments of 15 minutes, with partial increments rounded down;
3. Max hourly wage: The 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, will be used;
4. 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 will 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. Costs for Duplication or Publication:

1. Includes making paper and non-paper copies;
2. Fees will be charged in increments of 15 minutes with partial increments rounded down;
3. Max hourly wage: the 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 will be used.

iv. Costs for Fringe Benefits:

1. A multiplier of 50% will 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 will 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 will not be used unless specifically agreed to, in writing, by you.

e. Cost 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.
- f. 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.

VII. Deposit Requirements:

- a. A deposit may be required if the estimated fee for your requested records will exceed \$50.00. The deposit will not exceed one-half ($\frac{1}{2}$) of the total fee estimate. Any request for a deposit must include a detailed itemization of the estimated fee. The response will also contain a good-faith non-binding estimate of the amount of time it will take the Public Body to comply with your request.
- b. If you have 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 any estimate given (if one was given);
 - 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 you in writing that the Public Records were available for pick-up or mailing;
 - v. You are 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 you:
 - i. Produce proof of payment; or
 - ii. Pay in full for the prior request; or
 - iii. Three hundred sixty-five (365) days have passed since you made the request that was not paid for.

VIII. Discounts with Proof of Indigence:

- a. You may request the first \$20.00 of fees be waived if you produce an affidavit stating that:
 - i. You are indigent and receiving public assistance; or
 - ii. You are indigent and stating facts showing an inability to pay costs due to indigency.

- b. Discounts will be fully noted on the fee itemization form.
- c. You will be ineligible for a discount if:
 - i. You previously received discounted copies of Public Records from the same Public Body two (2) times during the calendar year; or
 - ii. You request 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.

IX. Process for Appealing the Denial of a Request: If your request is denied in whole or in part, and you do not believe the denial is supported by the law, you may seek an appeal.

- a. Appeals to the Board of CMHSAS-SJC:
 - i. If you appeal 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 Public Body 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.

- v. 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.
 - iv. 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 you prevail, 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.

X. Process for Appealing Fees:

- a. If you believe you have been charged a fee that is larger than that allowed by FOIA, you 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.
 - vi. 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. You may only seek judicial review for a FOIA fee you believe to be in excess of that allowed by FOIA if:
 1. The Board of CMHSAS-SJC fails to respond to your written appeal;
 2. You disagree with the final 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 Summary is for information purposes only. To the extent that anything included in this Public Summary 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.*
