

Community Mental Health for Central Michigan (CMHCM)

Public Summary of FOIA Procedures and Guidelines

It is the public policy of this state that all persons (except those persons incarcerated in federal, state, or local correctional facilities) 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. The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the written Public Summary of Community Mental Health for Central Michigan's policies and procedures relevant to the general public. This is only a summary. For more details and information, copies of CMHCM's policies/procedures are available at no charge at any CMHCM office location and on the agency's website: www.cmhcm.org.

1. How do I submit a FOIA request?

- A request must sufficiently describe a public record so as to enable CMHCM to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by CMHCM may be submitted on the agency's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.
 - Any verbal request will be documented by CMHCM on the agency's FOIA Request Form.
 - No specific form to submit a written request is required. However a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the agency's website at www.cmhcm.org and at any CMHCM office.
- Written requests may be delivered to CMHCM in person or by mail at 301 South Crapo Street, Mt. Pleasant, Michigan. Requests may also be faxed to: 989.773.1968 or emailed to foia@cmhcm.org. To ensure a prompt response, faxed and emailed requests should contain the term "FOIA" or "FOIA Request" on the cover page/subject line.

2. What kind of response can I expect to my request?

- Within five business days after receiving a FOIA request CMHCM will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. CMHCM will respond to your request in one of the following ways:
 - Grant the request,
 - Issue a written notice denying the request,

- Grant the request in part and issue a written notice denying in part the request,
 - Issue a notice indicating that an additional ten business days are needed to respond, or
 - Issue a written notice indicating that the public record requested is available at no charge on the agency's website.
- If the request is granted, or granted in part, CMHCM will ask that payment, if less than \$50, be made for the allowable fees associated with responding to the request before the public record is made available.
 - If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, CMHCM will require a deposit before processing the request.

3. What are CMHCM's deposit requirements?

- If the agency has made a good faith calculation that the total fee for processing the request will exceed \$50, the agency will require that you provide a deposit in the amount of 50 percent of the total estimated fee. When CMHCM requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.
- If CMHCM receives a request from a person who has not paid the agency for copies of public records made in fulfillment of a previously granted written request, CMHCM will require a deposit of 100 percent of the estimated processing fee before it begins to search for the public record for any subsequent written request when **all** of the following conditions exist:
 - The final fee for the prior written request is not more than 105 percent of the estimated fee;
 - The public records made available contained the information sought in the prior written request and remain in CMHCM's possession;
 - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by CMHCM to provide the records;
 - Ninety (90) days have passed since CMHCM notified the individual in writing that the public records were available for pickup or mailing;
 - The individual is unable to show proof of prior payment to CMHCM; and
 - CMHCM has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- CMHCM will not require the 100 percent estimated fee deposit if any of the following apply:
 - The person making the request is able to show proof of prior payment in full to CMHCM;
 - CMHCM is subsequently paid in full for all applicable prior written requests; or
 - Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted.

4. How does CMHCM calculate FOIA processing fees?

A. Labor Costs

1. All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
2. Labor costs will be charged at the hourly wage of the lowest-paid CMHCM employee capable of doing the work in the specific fee category, regardless of who actually performs work.
3. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. CMHCM may add up to 50 percent to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
4. Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
5. Contracted labor costs will be charged at six times the state minimum hourly wage.
6. A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the agency. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to CMHCM's usual FOIA requests, because of the nature of the request in the particular instance. CMHCM must specifically identify the nature of the unreasonably high costs in writing.

B. Copying and Duplication – CMHCM must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

1. Non-paper Copies on Physical Media
 - The cost for records provided on non-paper physical media, such as computer discs, computer tapes, or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
 - This cost will be charged only if CMHCM has the technological capability necessary to provide the public record in the requested non-paper physical media format.
 - CMHCM will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the agency's technology infrastructure.
2. Paper Copies
 - Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed 10¢ per sheet of paper.
 - Copies for non-standard sized sheets will reflect the actual cost of reproduction.

C. Mailing Costs

1. The cost to mail public records will use a reasonably economical and justified means.
2. CMHCM may charge for the least expensive form of postal delivery confirmation.
3. No cost will be made for expedited shipping or insurance unless you request it.

D. Waiver of Fees – The cost of the search for and copying of a public record may be waived or reduced if, in the judgment of the FOIA Coordinator and Executive Director, a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. CMHCM may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

5. How do I qualify for an indigence discount on the fee?

CMHCM will discount the first \$20 of fees for a request if you submit an affidavit* stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20 discount if you:

- Have previously received discounted copies of public records from the agency twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

*An affidavit is a sworn statement. For your convenience, CMHCM has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the FOIA Request Form, which is available on the agency's website: www.cmhcm.org.

6. How may I challenge the denial of a public record or an excessive fee?

A. Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal by filing a written appeal of the denial with the office of the Executive Director.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial. You may use the FOIA Appeal Form (to appeal a denial of records), which is available on the agency's website: www.cmhcm.org.

Within ten business days of receiving the appeal the Executive Director will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the Executive Director, you may file a civil action in Circuit Court within 180 days after the Executive Director's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that CMHCM acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

B. Appeal of an Excess FOIA Processing Fee

If you believe that the fee charged by CMHCM to process your FOIA request exceeds the amount permitted by state law, you must first appeal by filing a written appeal for a fee reduction to the office of the Executive Director.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. You may use the FOIA Appeal Form (to appeal an excess fee), which is available on the agency's website: www.cmhcm.org.

Within ten business days after receiving the appeal, the Executive Director/designee will respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than ten business days the period during which the Executive Director/designee will respond to the written appeal.

Within 45 days after receiving notice of CMHCM's determination of the processing fee appeal, you may commence a civil action in Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50 percent or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that CMHCM acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

6.22.15

CMHCM: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.

Community Mental Health for Central Michigan (CMHCM)
301 South Crapo Street, Suite 100
Mt. Pleasant, MI 48858

Request Form
Note: Requestors are not required to use this form. CMHCM may complete one for recordkeeping if not used.

FOIA Request for Public Records
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: _____ **Date Received:** _____ **Check if received via:** Email Fax Other Electronic Method
(Please Print or Type) **Date delivered to junk/spam folder:** _____
Date discovered in junk/spam folder: _____

Name	Phone	
Firm/Organization	Fax	
Street	Email	
City	State	Zip

Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis

Delivery Method: Will pick up Mail to address above Email to address above Deliver on digital media provided by CMHCM

Note: CMHCM is not required to provide records in a digital format or on digital media if the agency does not already have the technological capability to do so. Also, if any fulfilled FOIA request is undeliverable by mail or email, CMHCM will attempt to contact the requestor by phone for pick-up.

Describe the public record(s) as specifically as possible. You may use this form or attach additional sheets:

Consent to Non-Statutory Extension of CMHCM's Response Time

I have requested a copy of records or a subscription to records or the opportunity to inspect records, pursuant to the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq. I understand that CMHCM must respond to this request within five business days after receiving it, and that response may include taking a ten business day extension. However, I hereby agree and stipulate to extend CMHCM's response time for this request until: _____ (month, day, year).

Requestor's Signature	Date
------------------------------	-------------

(Complete both sides)

Records Located on Website (www.cmhcm.org)

If CMHCM directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on its website, CMHCM must notify the Requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, CMHCM must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If CMHCM has included the website address for a record in its written response to the Requestor and the Requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, CMHCM must provide the public records in the specified format (if CMHCM has the technological capability) but may use a fringe benefit multiplier greater than the 50 percent, not to exceed the actual costs of providing the information in the specified format.

Request for Copies/Duplication of Records on CMHCM's Website

I hereby stipulate that, even if some or all of the records are located on CMHCM website (www.cmhcm.org), I am requesting that CMHCM make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature

Date

Overtime Labor Costs

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

Consent to Overtime Labor Costs

I hereby agree and stipulate to CMHCM using overtime wages in calculating the following labor costs as itemized in the following categories:

1. Labor to copy/duplicate 2. Labor to locate 3a. Labor to redact 3b. Contract labor to redact
6b. Labor to copy/duplicate records already on CMHCM's website

Requestor's Signature

Date

Request for Discount: Indigence

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a Requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

Office Use: Affidavit Received Eligible for Discount Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

Request for Discount: Nonprofit Organization

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20 of the fee** for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.
(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.
(iii) Is accompanied by documentation of its designation by the state, if requested by CMHCM.

Office Use: Documentation of State Designation Received Eligible for Discount Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931:

Date:

Requestor's Signature:

- I. **PURPOSE:** The Michigan Freedom of Information Act (FOIA) authorizes public access to certain records and exempts others. The Act states that it is the public policy of the State of Michigan that all persons, except those incarcerated, consistent with the Michigan FOIA, 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 employees. The people shall be informed so that they fully participate in the democratic process.
- II. **APPLICATION:** The policies and procedures apply to Community Mental Health for Central Michigan (CMHCM).
- III. **REFERENCE:**
 - A. Michigan Freedom of Information Act (FOIA) 1976 PA 442 (LINK: [Michigan FOIA 1976 PA 442](#))
 - B. Michigan Freedom of Information Act (FOIA) 2015 PA 563, effective July 1, 2015 (LINK: [Michigan FOIA 2015 PA 563](#))
 - C. Employee Right to Know Act 1978 PA 397 of 1978; MCL 423.502
 - D. Michigan Mental Health Code 1974 PA 258; Section 330.1748
- IV. **DEFINITIONS:**
 - A. **FOIA COORDINATOR** The Executive Director is designated this title to accept, process, and respond to requests for a public record. The FOIA Coordinator has designated the Executive Assistant to act on his or her behalf in accepting and processing requests for the public body's public records and in approving a denial.
 - B. **PUBLIC BODY** A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof. An agency, board, commission or council in the legislative branch of the state government. A county, city township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof. Any other body which is created by state or local authority or which is primarily funded by or through state or local authority. The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.
 - C. **PUBLIC RECORD** A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. Public records are separated into two classes: those that are exempt from disclosure under Section 13 of PA 442, and all public records that are not exempt from disclosure under PA 442 Section 13 and which are subject to disclosure under PA 442.

V. POLICY:

- A. CMHCM will comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.
- B. CMHCM acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The agency acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA (e.g., information or records subject to attorney-client privilege, protected health information, information of a personal nature that would constitute a clearly unwarranted invasion of an individual's privacy, etc.) in order to ensure the effective operation of government and to protect the privacy of individuals. (LINK: [exemptions](#)).
- C. CMHCM will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The agency will disclose public records consistent with and in compliance with State law.
- D. CMHCM, acting pursuant to the authority at MCL 15.236, designates the Executive Director as the FOIA Coordinator. He or she is authorized to designate other agency staff to act on his or her behalf to accept and process written requests for the agency's public records and approve denials.
- E. FOIA requests can be received in writing, verbally, or electronically, including email or fax by reasonably describing the records being sought.
- F. If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to an agency spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request. The FOIA Coordinator shall review his or her spam and junk-mail folders on a regular basis, which shall be no less than once a month.
- G. CMHCM will ask that payment, if less than \$50, be made for the allowable fees associated with responding to the request before the public record is made available. If the cost of processing the request is expected to exceed \$50, or if the requestor has not paid for a previously granted request, CMHCM will require a deposit before processing the request.
- H. CMHCM is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other agency staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.
- I. If CMHCM is requested to provide records on non-paper physical media, CMHCM will procure the non-paper media and will not accept non-paper media from the requestor in order to ensure integrity of the agency's technology infrastructure.
- J. CMHCM shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect agency records from loss, alteration, mutilation, or destruction and to prevent excessive interference with normal operations.

- K. The FOIA Coordinator or designee shall keep a copy of all written requests for public records received by CMHCM on file for a period of at least one year.
- L. A copy of these policies and procedures and the written Public Summary will be provided to the requestor free of charge both in the agency's response to a written request for public records, and upon request by visitors at any CMHCM office. If it does not, CMHCM cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance. Because these policies and procedures and the written Public Summary are maintained on the agency's website at: www.cmhcm.org, a link to the policies and procedures and the written Public Summary may be provided in lieu of providing paper copies of those documents.

VI. PROCEDURE:

A. REQUESTING A PUBLIC RECORD

1. No specific form to submit a request for a public record is required; however, the FOIA Coordinator or designee may make available a FOIA Request Form for use by the public.
2. Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the agency may be submitted on the FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.
3. Verbal requests for records shall be documented on the FOIA Request Form.
4. If a person makes a verbal, non-written request for information believed to be available on the agency's website, where practicable and to the best ability of the employee receiving the request, the requestor shall be informed of the pertinent website address.
5. A request must sufficiently describe a public record so as to enable staff to identify and find the requested public record.
6. Written requests for public records may be submitted in person or by mail to any CMHCM office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator or designee for processing.
7. A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. CMHCM will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format. CMHCM will procure and charge for any non-paper media and will not accept media from the requestor in order to ensure integrity of the agency's technology infrastructure.
8. A person may subscribe to future issues of public records that are created, issued or disseminated by CMHCM on a regular basis. A subscription is valid for up to six months and may be renewed by the subscriber.
9. A person serving a sentence of imprisonment in a local, state, or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.
10. Upon any request for a public record, staff will notify the Executive Director's office.
11. All requests are to be date stamped upon receipt. If the request is received at a location other than the Administrative Office, the request will be date stamped and immediately faxed to the FOIA Coordinator.
12. The Executive Assistant will log the request in the FOIA request log.

B. PROCESSING A REQUEST

1. Unless otherwise agreed to in writing by the person making the request, CMHCM will issue a response within five business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on

- the following business day. If any fulfilled FOIA request is undeliverable by mail or email, CMHCM will attempt to contact the requestor by phone for pick-up.
2. The agency will respond to a request in one of the following ways:
 - Grant the request.
 - Issue a written notice denying the request.
 - Grant the request in part and issue a written notice denying in part the request.
 - Issue a notice indicating that due to the nature of the request CMHCM needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
 - Issue a written notice indicating that the public record requested is available at no charge on the agency's website.
 3. When a request is granted:
 - a. If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.
 - b. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.
 - c. FOIA policies and procedures and the written Public Summary are maintained on the agency's website at: www.cmhcm.org. A link to these policies and procedures and the written Public Summary will be provided in lieu of providing paper copies of those documents along with the written response. If the requestor prefers a hardcopy of these policies and procedures and the written Public Summary they will be provided free of charge upon request.
 - d. If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.
 - e. If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, CMHCM will require a good-faith deposit pursuant to the FEE DEPOSITS section of this policy before processing the request.
 - f. In making the request for a good-faith deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the agency to process the request and also provide a best efforts estimate of a time frame it will take the agency to provide the records to the requestor. The best efforts estimate shall be nonbinding, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.
 4. When a request is denied or denied in part:
 - a. The FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:
 - An explanation as to why a requested public record is exempt from disclosure; or
 - An attestation that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the agency; or
 - An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
 - An explanation of the person's right to submit an appeal of the denial to either the office of the Executive Director or seek judicial review in Circuit Court; and
 - An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
 - The Notice of Denial shall be signed by the FOIA Coordinator.

- b. If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.
 5. If a requestor wishes to examine and inspect a public record during business hours, arrangements can be made for him or her to do so in the presence of the Executive Assistant or Office Manager/designee to assure the record is not altered, mutilated, or destroyed.
 6. The FOIA Coordinator shall, upon request, furnish a certified copy of a public record at no additional cost to the person requesting the public record. This copy will be marked “Certified Copy” and be given to the requestor with a Copy Certification affidavit signed by a Notary Public.
- C. FEE DEPOSITS
1. If the fee estimate is expected to exceed \$50 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.
 2. If a request for public records is from a person who has not paid the agency in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100 percent of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:
 - The final fee for the prior written request is not more than 105 percent of the estimated fee;
 - The public records made available contained the information sought in the prior written request and remain in the agency’s possession;
 - The public records were made available to the individual, subject to payment, within the time frame estimated by the agency to provide the records;
 - Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
 - The individual is unable to show proof of prior payment to the agency; and
 - The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request’s increased estimated fee deposit (i.e., the amount that was already owed for a previously granted request in addition to the current request’s estimated fee deposit).
 3. The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:
 - The person making the request is able to show proof of prior payment in full to the agency;
 - CMHCM is subsequently paid in full for the applicable prior written request; or
 - Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the agency.
- D. CALCULATION OF FEES
1. A fee may be charged for the labor cost of copying/duplication.
 2. A fee will **not** be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information **unless** failure to charge a fee would result in unreasonably high costs to the agency because of the nature of the request in the particular instance, and the agency specifically identifies the nature of the unreasonably high costs.
 3. Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are “unreasonably high” when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the agency’s usual FOIA requests, not compared to the agency’s operating budget.

- (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)
4. The following factors shall be used to determine an unreasonably high cost to the agency:
 - Volume of the public record requested.
 - Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
 - Whether the public records are from more than one department or whether various CMHCM offices are necessary to respond to the request.
 - The available staffing to respond to the request.
 - Any other similar factors identified by the FOIA Coordinator in responding to the particular request.
 5. The Michigan FOIA statute permits the agency to charge for the following costs associated with processing a request:
 - Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
 - Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the agency.
 - Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the agency.
 - The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the agency's website if CMHCM is requested to make copies.
 - The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the agency's website if the requestor asks CMHCM to make copies.
 - The cost to mail or send a public record to a requestor.
 6. Labor costs will be calculated based on the following requirements:
 - All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
 - Labor costs will be charged at the hourly wage of the lowest-paid CMHCM employee capable of doing the work in the specific fee category, regardless of who actually performs work.
 - CMHCM may add up to 50 percent to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
 - Overtime wages will not be included in labor costs unless agreed to by the requestor. Overtime costs will not be used to calculate the fringe benefit cost.
 - Contracted labor costs will be charged at six times the state minimum hourly wage.
 7. The cost to provide records on non-paper physical media procured by CMHCM, when so requested, will be based on the following requirements:
 - Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
 - This cost will only be assessed if the agency has the technological capability necessary to provide the public record in the requested non-paper physical media format.
 8. The cost to provide paper copies of records will be based on the following requirements:

GENERAL ADMINISTRATION/QUALITY MANAGEMENT/
SAFETY, HEALTH, & ENVIRONMENT/INFORMATION SYSTEMS MANAGEMENT – CHAPTER 5
GENERAL ADMINISTRATION – SECTION 100
RELEASE OF INFORMATION THROUGH THE FREEDOM OF INFORMATION ACT – SUBJECT 014
Page 7 of 10

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed 10¢ per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
 - CMHCM will provide records using double-sided printing, if it is cost-saving and available.
9. The cost to mail records to a requestor will be based on the following requirements:
- The actual cost to mail public records using a reasonably economical and justified means.
 - CMHCM may charge for the least expensive form of postal delivery confirmation.
 - No cost will be made for expedited shipping or insurance unless specified by the requestor.
10. If the FOIA Coordinator does not respond to a written request in a timely manner, the agency must:
- Reduce the labor costs by five percent for each day CMHCM exceeds the time permitted under FOIA up to a 50 percent maximum reduction, if **any** of the following applies:
 - CMHCM's late response was willful and intentional,
 - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
 - Fully note the charge reduction in the Detailed Cost Itemization Form.
- E. **WAIVER OF FEES:** The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. CMHCM may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.
- F. **DISCOUNTED FEES**
1. **Indigence:**
- a. The FOIA Coordinator will discount the first \$20 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:
 - Indigent and receiving specific public assistance, or
 - If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.
 - b. An individual is not eligible to receive the waiver if:
 - The requestor has previously received discounted copies of public records from CMHCM twice during the calendar year; or
 - The requestor requests information in connection with other persons who are offering or providing payment to make the request.
 - c. An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.
2. The FOIA Coordinator will discount the first \$20 of the processing fee for a request from Michigan Protection and Advocacy, the nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
- Is made directly on behalf of the organization or its clients.
 - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.

- Is accompanied by documentation of its designation by the state, if requested by the public body.

G. APPEAL OF A DENIAL OF A PUBLIC RECORD

1. When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal by filing an appeal of the denial with the office of the Executive Director.
2. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The FOIA Appeal Form (to appeal a denial of records), may be used.
3. Within ten business days of receiving the appeal the Executive Director will respond in writing by:
 - Reversing the disclosure denial;
 - Upholding the disclosure denial; or
 - Reverse the disclosure denial in part and uphold the disclosure denial in part; or
 - Under unusual circumstances, issue a notice extending for not more than ten business days the period during which the agency shall respond to the written appeal. CMHCM shall not issue more than one notice of extension for a particular written appeal.
4. If CMHCM fails to respond to a written appeal or 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 a civil action in Circuit Court.
5. Whether or not a requestor submitted an appeal of a denial to CMHCM, he or she may file a civil action in Circuit Court within 180 days after the agency's final determination to deny the request.
6. If a court that determines a public record is not exempt from disclosure, it shall order CMHCM to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.
7. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or CMHCM prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.
8. If the court determines that CMHCM has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the agency to pay a civil fine of \$1,000, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000 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.

H. APPEAL OF AN EXCESSIVE FOIA PROCESSING FEE

1. "Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.
2. If a requestor believes that the fee charged by CMHCM to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to CMHCM by submitting a written appeal for a fee reduction to the office of the Executive Director.
3. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The FOIA Appeal Form (to appeal an excess fee) may be used.
4. Within ten business days after receiving the appeal, the Executive Director will respond in writing by:

- Waiving the fee;
 - Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
 - Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
 - Issuing a notice detailing the reason or reasons for extending for not more than ten business days the period during which CMHCM will respond to the written appeal. CMHCM shall not issue more than one notice of extension for a particular written appeal.
5. Where the agency reduces or upholds the fee, the determination must include a certification from the Executive Director that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available FOIA policies and procedures.
 6. Within 45 days after receiving notice of the agency's determination of an appeal, the requesting person may commence a civil action in Circuit Court for a fee reduction.
 7. If a civil action is commenced against the agency for an excess fee, CMHCM is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.
 8. An action shall not be filed in Circuit Court unless **one** of the following applies:
 - CMHCM does not provide for appeals of fees,
 - CMHCM failed to respond to a written appeal as required, or
 - CMHCM issued a determination to a written appeal.
 9. If a court determines that CMHCM required a fee that exceeds the amount permitted under its publicly available policies and procedures or the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.
 10. If the requesting person prevails in court by receiving a reduction of 50 percent or more of the total fee, 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.
 11. If the court determines that CMHCM has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the agency to pay a civil fine of \$500, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500 to the person seeking the fee reduction. The fine and any 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.

Employee Right to Know Act (PA 397 of 1978; MCL 423.502, et seq.)

The Bullard-Plawecki Employee Right to Know Act is applicable to all current and former employees of an employer and is not part of the FOIA statute. The Right to Know Act provides various legal requirements pertaining to the personnel records of employees. If the Executive Director determines a FOIA request to be an Employee Right to Know Act request, appropriate actions will occur in compliance with the Right to Know Act.

For more information, please refer to the Personnel Administration (Chapter 4), General (Section 100), General Principles (4.100.001).

Michigan Mental Health Code (PA 258 of 1974; Section 330.1748)

The Michigan Mental Health Code is applicable to all individuals who receive services from Community Mental Health for Central Michigan. The Michigan Mental Health Code protects information in the record of a recipient, and other information acquired in the course of providing mental health services and shall be kept confidential and not open to public inspection except in specific circumstances.

For more information, please refer to the Michigan Mental Health Code (LINK: [Michigan Mental Health Code](#)).

Approved: 6/30/15