VILLAGE OF MACKINAW CITY

FREEDOM OF INFORMATION ACT

PROCEDURES & GUIDELINES

It is the policy of the Village of Mackinaw City (the "public body") that all persons are entitled to full and complete information regarding governmental decision-making, consistent with the Michigan Freedom of Information Act (the "FOIA" or the "Act").

For purpose of these procedures and guidelines, a "public record" means: a writing prepared, owned, used, in the possession of, or retained by [Name of Public Body] in the performance of an official function, from the time it is created. Public record does not include computer software.

Procedures & Guidelines:

I. GENERAL INFORMATION

1. All officers, employees, and agents of the Village of Mackinaw City shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

2. The Village Clerk is hereby designated the "FOIA Coordinator" with the authority and responsibilities stated in the Act and these procedures and guidelines.

3. The FOIA Coordinator shall be responsible to accept and process all written requests for public records under the Act and shall be responsible for approving a denial under Section 5 of the Act (MCL 15.235).

4. These procedures and guidelines regarding time frames, appeals, and fees do not apply to public records prepared for, or disclosed pursuant to another act or statute (i.e., requests for medical records made pursuant to the Public Health Code, or requests made pursuant to the Public Employment Relations Act or the Bullard-Plawecki Employee Right to Know Act, etc.).

II. WRITTEN REQUESTS

1. All individuals desiring to inspect or receive a copy of a public record shall make a written request to the FOIA Coordinator that describes the public record sufficiently to enable the FOIA Coordinator, or his/her designee, to identify and locate the public record.

2. The FOIA Coordinator, or any other designee, is not required to respond to oral requests for public records, but may do so for routine requests that can be granted immediately.

3. If a written request is received directly by a Village of Mackinaw City employee other than the FOIA Coordinator, the original shall be promptly forwarded to the FOIA Coordinator. The date the Village of Mackinaw City employee receives the request shall be considered the date the request is validly received by the Village of Mackinaw City, for the purpose of determining when a response is due.

4. A written request made by facsimile, electronic mail, or other electronic transmission is not received by the FOIA Coordinator until one business day after the electronic submission is made. If a request is delivered to a spam or junk mail folder, the request is not received by the FOIA Coordinator until one business day after it is discovered.

5. Upon receiving a written request for a public record pursuant to these procedures and guidelines, a person or entity has the right to inspect, copy, or receive copies of the requested public record(s), unless the requested public record is exempt from disclosure pursuant to Section 13 of the Act (MCL 15.243), as amended. If the exempt status of any request is questioned, legal counsel should be consulted. New public records, compilations, summaries, and/or reports of information shall not be created in response to a FOIA request.

6. Upon request for public inspection, the FOIA Coordinator, or any other designee, shall furnish a requestor a reasonable opportunity for inspection and examination of the requested public records, subject to applicable exemptions, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during regular business hours.

7. A requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. Notwithstanding the foregoing, such stipulation must be within the technological capabilities of the Village of Mackinaw City.

8. A person or entity may subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to six months, at the request of the subscriber, and shall be renewable.

9. If a requested public record may be obtained on the Village of Mackinaw City's website or webpage, the FOIA Coordinator shall notify the requestor in writing of such availability and provide the direct internet address or link to obtain such public record. If, after receiving such written notification from the FOIA Coordinator, the requestor notifies the Village of Mackinaw City that he or she continues to want the Village of Mackinaw City to provide a copy of the available public record, in any format, the Village of Mackinaw City shall process such request and may impose additional labor costs as specified within Article IV below.

III. REQUEST PROCESSING

1. When the Village of Mackinaw City receives a written request for a public record, the FOIA Coordinator, or any other designee, shall, in not more than five (5) business days after the Village of Mackinaw City receives the request, respond to the request by one of the following:

    a. Grant the request.

    b. Issue a written notice to the requestor denying the request.

    c. Grant the request in part and issue a written notice to the requestor denying the request in part.

    d. Issue a written notice extending, for not more than ten (10) business days, the period during which the Village of Mackinaw City shall respond to the request.

2. Any failure to respond to a written request as provided for above constitutes the [public body]'s determination to deny the request.

3. Any written response denying a request for a public record, in whole or in part, is a final determination to deny the request or portion of that request. A denial response should contain the following:

    a. An explanation of the basis under the Act or other statute for the determination that a public record(s), or portion(s) thereof, is exempt from disclosure, if that is the reason for denying all or part of a request.

    b. A statement that the public record(s) do not exist under the name/description given by the requestor or by another name reasonably known to the [public body].

    c. A description of a public record(s) or information on a public record that is separated or deleted if such separation or deletion is made.

    d. A full explanation of the requestor's right to either file an appeal with the [head of the public body (i.e., Board, Commission, etc.)] or seek judicial review of the denial pursuant to Section 10 of the Act (MCL 15.240).

    e. Notice that a requestor may receive attorneys' fees and damages pursuant to the Act if the Court determines that the [public body] has not complied with Section 5 (MCL 15.235) of the Act and orders disclosure of all or a portion of a public record.

IV. DEPOSIT & FEES

1. Fees for responding to any request shall include duplication (copying) costs and mailing costs. Duplication (copying) costs shall be set from time to time by resolution of the in an amount that does not exceed 10 cents per page (8½ x 11 and 8½ x 14). The Village of Mackinaw City shall use the most economical method of duplication (*i.e.*, double-siding, etc.) and the least expensive form of postal delivery, unless a more expensive method is specifically requested by the FOIA requestor.

2. The cost of hourly labor may also be charged if the failure to do so will result in unreasonably high costs to the Village of Mackinaw City because of the nature of the request in a particular instance. If such is the case, the Village of Mackinaw City shall specifically identify the nature of these unreasonably high costs. For purposes of these procedures and guidelines, "unreasonably high costs" shall generally mean calculated labor costs that are estimated to exceed $50.00, inclusive of salary or wage and fringe benefits.

3. Labor costs shall include the cost of the search, examination, review, separation, and/or deletion of exempt information from non-exempt information in order to fulfill a request.

4. Labor costs will be calculated using the wage of the lowest paid Village of Mackinaw City employee capable of searching for, locating, and examining the public record(s), regardless of whether that person is available or actually performs the labor. Labor costs shall be charged in increments of at least 15 minutes or more with all partial time increments rounded down. The Village of Mackinaw City may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits. If it does so, it will clearly note the percentage multiplier used to account for benefits in the detailed itemization form. Subject to the 50% limitation, the Village of Mackinaw City shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Notwithstanding the foregoing, 100% of fringe benefit costs may be added to the applicable labor charge if a requestor is notified in writing that public records are available on the Village of Mackinaw City's website or webpage and the requestor continues to request that the Village of Mackinaw City provide a copy, in any format, of the available public record.

5. Overtime wages shall not be included in the calculation of labor costs unless the requestor specifically approves the use of overtime in writing, and overtime wages are clearly noted in the detailed itemization form.

6. If the [public body] does not employ a person in-house who is capable of separating exempt from non-exempt information in a particular instance, as determined by the FOIA Coordinator, it may utilize an outside contractor. In those instances, the [public body] shall clearly note the name of the contractor or firm on the detailed itemization form. The cost

of the contractor's labor, including necessary review directly associated with separating and deleting exempt information from non-exempt information, shall not exceed an amount equal to 6 times the state minimum hourly wage rate.

7. The Village of Mackinaw City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

8. The [public body] may require a good faith deposit (not to exceed 50% of the total labor and duplication costs) from the requestor, if the total estimated fee exceeds fifty dollars ($50.00). A request for a good faith deposit shall include a detailed itemization of the fee the Village of Mackinaw City estimates or charges pursuant to the Act. Additionally, a request for a good faith deposit shall include a best efforts estimate regarding the time frame it will take to comply with the Act in providing the public records to the requestor. The Village of Mackinaw City may require a one-hundred percent (100%) deposit from a requestor who has not previously paid a fulfilled FOIA request, provided the requirements in Section 5 of the Act are met.

9. All fees and deposits calculated under these procedures and guidelines shall be listed within a detailed itemization form that shall be provided to the requestor. A copy of such form is attached hereto and incorporated by reference.

10. Pursuant to Section 4(2) of the Act, the Village of Mackinaw City shall search for and furnish a copy of a public record without charge for the first $20.00 of the fee for each request made by either of the following:

    a. An individual who is entitled to information under the Act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigence. If an individual is ineligible for a discount, then the Village of Mackinaw City will inform the individual of the specific reason for the ineligibility in its written response. The right to financial assistance for indigent individuals shall not apply where:

        (i) an individual has received discounted copies of public records from the Village of Mackinaw City twice during the calendar year; or

        (ii) an individual requests information in conjunction with outside parties who are offering or providing payment, or other remuneration to the individual to make the request.

    b. A non-profit 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, Public Law 106-402, and The Protection And Advocacy For Individuals With Mental Illness Act, Public Law 99-319, or their successors provided the following requirements are satisfied:

(i) the request is made directly on behalf of the organization or its clients;

(ii) the request is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931; and

(iii) the request is accompanied by documentation of its designation by the State, if requested by the Village of Mackinaw City.

11. The Village of Mackinaw City may waive any charges if the FOIA Coordinator determines the cost is de minimis. For purposes of these procedures and guidelines, "de minimis" shall mean a calculated fee that is estimated to be less than $10.00, inclusive of labor costs, duplication and mailing.

V. FEE DISPUTE APPEAL

1. If the requestor believes the fee estimated or charged for the request exceeds the amount permitted under these procedures and guidelines or Section 4 of the Act, the requestor is required to submit to the Village Council a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under these procedures and guidelines or Section 4 of the Act.

2. Within 10 business days after receiving a written appeal, the Village Council shall do one of the following:

   a. Waive the fee.

   b. Reduce the fee and issue a written determination to the requestor indicating the specific basis under Section 4 of the Act that supports the remaining fee. The determination shall include a certification from the Village Council that the statements in the determination are accurate and that the reduced fee complies with these procedures and guidelines and Section 4 of the Act.

   c. Uphold the fee and issue a written determination to the requestor indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Village Council that the statements in the determination are accurate and that the fee complies with these procedures and guidelines and Section 4 of the Act.

d. Issue a notice extending, for not more than 10 business days, the period during which the Village Council shall respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Village Council shall not issue more than one notice of extension for a particular written appeal.

3. If a requestor disagrees with the Village of Mackinaw City's determination, the requestor may comment an action in Circuit Court in the County in which the Village of Mackinaw City is located, within 45 days of the public body's determination, to seek a fee reduction.

VI. RIGHT TO APPEAL A DENIAL OF A PUBLIC RECORD REQUEST

1. If a requestor desires to appeal a denial of a request for a public record, in whole or in part, the requestor may submit a written appeal to the Village Council or may seek judicial review of the denial, pursuant to Section 10 of the Act (MCL 15.240). A written appeal to the Villager Council shall specifically state the word "appeal" and identify the reason(s) for reversal of the denial.

2. Within 10 business days after receiving a written appeal, the Village Council shall do one of the following:

   a. Reverse the disclosure denial.

   b. Issue a written notice to the appellant upholding the denial.

   c. Reverse the denial in part and issue a written notice to the appellant upholding the denial in part.

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

3. The Village Council is not considered to have received a written appeal until its next regularly scheduled meeting after the appeal is submitted.

4. Any failure to respond to an appeal shall be considered a decision to uphold the denial. If an appeal is denied in whole or in part by the Village Council, the appellant may seek judicial review of the nondisclosure by commencing an action in Circuit Court in the County in which the Village of Mackinaw City is located.

Adopted: June 18, 2015