



Policies, Procedures and Guidelines

- POLICY NO.: L10001
- POLICY: REVISED
- EFFECTIVE DATE: 07/01/2015

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REVIEWED BY

APPROVED BY: Jeff De Lay, COO

Legal

DEPARTMENT

6 JULY 2015

APPROVAL DATE

SUBJECT: FREEDOM OF INFORMATION ACT

I. POLICY

The Detroit Wayne Mental Health Authority ("Authority") is a public body required by law to comply with Michigan's Freedom of Information Act, Public Act 442 of 1976, as revised ("FOIA"). It is the Authority's policy to grant people who are eligible access to public records, unless those records are exempt from disclosure by law.

II. PURPOSE

The purpose of these Policies, Procedures and Guidelines ("Policy") are to ensure uniformity of practice and procedures in releasing public records and the charging of fees to process a FOIA request. Further, the purpose of this Policy is to comply with the requirements of FOIA that the Authority make available to the public procedures and guidelines regarding its implementation of FOIA. Accordingly, copies of this Policy shall be made available to the general public for free, and this Policy shall further be made available on the Authority's FOIA Website.

III. APPLICATION

This policy applies to the Authority and to Authority employees.

IV. DEFINITIONS

Any terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under FOIA.

V. STANDARDS

- A. FOIA Coordinator - In the absence of a specific designation by the Authority's Chief Executive Officer, the individual serving as General Counsel, or his or her designee, shall act as the Authority's FOIA Coordinator. In no event may the Chief



Executive Officer of the Authority act in the capacity of the FOIA Coordinator. The Authority's FOIA Coordinator may designate assistants as may become necessary and delegate some of the responsibilities of the FOIA Coordinator to such individuals.

B. Receipt of FOIA Requests –

1. A "FOIA Request" is a request for public records made in writing with enough specificity to enable the FOIA Coordinator to locate the records. It may, or may not, specifically state that such request is being made pursuant to FOIA. Requests shall not be accepted from individuals serving a sentence of imprisonment in a state, county, or federal correctional facility.
2. The FOIA Coordinator is the designated recipient for all FOIA Requests. **Any employee, officer, or board member of the Authority that receives a FOIA Request shall immediately forward such request to the FOIA Coordinator.** Persons questioning how a FOIA Request may be initiated shall be directed to the Authority's FOIA Website (accessible by going to <http://www.dwmha.com/Home.aspx>, clicking on "About Us" and then navigating to FOIA), and further advised to submit such requests in writing to the attention of the FOIA Coordinator.

Requests may be submitted by mail to:

Detroit Wayne Mental Health Authority
Attn: FOIA Coordinator
640 Temple, 8th Floor
Detroit, MI 48201

Via email at FOIACoordinator@dwmha.com, or via facsimile at (313) 833-2156 (Attn: FOIA Coordinator).

3. A FOIA Request received via electronic transmission is not considered to have been received until one (1) business day after the electronic transmission is made, or if the FOIA Request is sent by electronic mail and delivered to the a spam or junk-mail folder, the request is not received until one (1) day after the Authority first becomes aware of the written request.
4. Upon receipt of a FOIA Request, the FOIA Coordinator shall immediately stamp the FOIA Request with the date the request was received, review the request to determine if it complies with the statute, and begin to process it.

C. Procedure for Response –

1. The FOIA Coordinator or designee shall review the request and collaborate with other Authority departments, as necessary, to see if there is a public record of the information requested in existence and available to the Authority. If there is a public record, the FOIA Coordinator or designee shall determine whether the public record is exempt from disclosure.
2. If the FOIA Request would require the Authority to create a new public record, the FOIA Coordinator shall determine, in consultation with Authority



administration, on a case by case basis, whether the interests of the public and/or the Authority are best served by the creation and production of such new record in compliance with the FOIA Request.

3. An initial response to the FOIA Request will be sent within (5) five business days of the date it was received by the Authority (and not the date upon which it was received by the FOIA Coordinator). A request received by electronic mail shall be considered to have been received on the next business day following its transmission, or as provided for in FOIA.
4. The Authority's initial response may grant the FOIA Request in full, grant it in part and deny it in part, deny the FOIA Request entirely (in compliance with FOIA requirements), or seek a one-time extension of up to ten (10) business days to respond to the FOIA Request. The response must at a minimum comply with the requirements in MCL 15.235. The follow-up response to a time-extension notification may grant the FOIA Request in full, grant it in part and deny it in part, deny the FOIA Request entirely (in compliance with FOIA requirements). No additional time extensions may be permitted.
5. If the requestor specifies in their request a preference to receive the response in electronic format (e.g., .pdf), and in the sole discretion of the FOIA Coordinator, it is determined that producing the response in the requested format is feasible, reasonable, and cost effective, the response may be provided to the requestor electronically.
6. Every response denying, in whole or in part, a FOIA Request shall include information regarding the requestor's rights to appeal the Authority's decision. The Authority's appeal process will comply with the requirements set forth in MCL 15.240.
7. The Authority shall keep and maintain a time stamped copy of each FOIA Request, the Authority's subsequent response(s), and any accompanying documents for a minimum of one (1) year from the date the FOIA Request was received and the response(s) issued.
8. Alternatively, at the discretion of the requestor, the Authority shall make available an opportunity for the requestor to make an inspection and examination of the identified public records at the Authority's offices, during regular business hours.

D. Denials and Appeals—

1. Any denials of a FOIA Request shall be made in compliance with MCL 15.243. Each denial shall reference the reason for the denial and the applicable FOIA section, as well as any additional information which could clarify the reason for denial, to the extent that such clarifying information may be produced.
2. Information and records concerning treatment and services rendered to individuals in the Authority's possession are not public records, and are specifically exempt from disclosure under the Health Insurance Portability



and Accountability Act ("HIPAA"), the Michigan Mental Health Code (MCL 330.1001 *et seq.*), the Michigan Public Health Code (MCL 333.1101 *et seq.*), the federal regulations covering the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), and other applicable laws concerning the confidentiality of an individual's health and personal information.

3. After receiving the Authority's final response denying all or a portion of a FOIA Request, a requestor may, at his or her discretion:
 - a. Make a written appeal (containing the word "appeal") to the Authority's Chief Executive Officer, or
 - b. Commence a civil action in Wayne County Circuit Court within one hundred eighty (180) days of the requestor's receipt of the Authority's final determination.
4. In the event the Authority's Chief Executive Officer receives an appeal of a FOIA denial, he or she shall within ten (10) business days provide a written response to the requestor either reversing the disclosure denial, upholding the disclosure denial, reversing the denial in part and upholding it in part, or issue a one-time notice extending the response period for up to ten (10) business days.
5. Requestors may also appeal the imposition of a fee by the Authority to the extent that such fee exceeds the amount permitted under this Policy. Such appeal may be made to the Authority's Chief Executive Officer, in the same manner as denial appeals described above, or may be made to the Wayne County Circuit Court within forty-five (45) days of the receipt of the final determination (or the Chief Executive Officer's determination upon appeal).
6. Pursuant to an appeal of excessive fees, the Authority's Chief Executive Officer shall within ten (10) business days provide a written response to the requestor either a waiving the contested fee, reducing the fee, upholding the fee, or issuing a one-time notice extending the response period for up to ten (10) business days.

E. Reimbursement of Costs -

1. The Authority may charge the requestor fees as reimbursements for costs incurred pursuant to a granted (or partially granted) FOIA Request, in compliance with FOIA. The Authority may recover costs only on the six (6) following categories of expenditures:
 - a. Labor associated with searching for, locating, and examining of public records.
 - b. Labor associated with necessary review and/or redaction of exempt information from, public records to be produced.
 - c. Labor associated with the duplication or publication, including the making of paper copies, to be given to a requestor.



- d. Non-paper physical media for electronic media storage.
 - e. Actual incremental costs of necessary duplication of paper records.
 - f. Actual costs of mailing, if any.
2. The Authority's fees for the above cost-reimbursed services shall be as indicated in the Fee Itemization Schedule attached hereto as Exhibit A. Any fee that is charged shall be in compliance with MCL 15.234.
 3. Labor Costs.
 - a. Labor costs shall be calculated and charged in increments of 15 minutes or more, with partial time increments rounded down. Rates for labor costs shall be at the lowest-paid employee rate for an Authority employee capable of performing the applicable task.
 - b. With regard to costs for labor associated with necessary review and/or redaction of exempt information, such costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate determined the Workforce Opportunity Wage Act (MCL 408.411 *et seq.*). As of the most recent revision of this Policy, this rate is \$48.90 per hour or \$12.23 per 15-minute increment of time.
 - c. The labor fee shall include 50% of the applicable labor charge amount, to cover or partially cover the cost of employee fringe benefits. In no event shall the Authority shall not charge more than the actual cost of fringe benefits.
 - d. Overtime wages shall not be included in the calculation of labor costs unless specifically agreed to by the requestor, in writing.
 4. The fee for duplication of paper records shall not exceed \$0.10 per normal sheet of paper. The Authority shall utilize the most economical means available for making copies available, including using double-sided printing.
 5. In the event the Authority determines through a good-faith estimate that the fees to process the FOIA Request will be more than \$50.00, the requestor may be required to pay a good faith deposit of up to one-half ($\frac{1}{2}$) of the anticipated costs before the Authority begins processing the FOIA Request or provides the public records.
 6. The Authority may, in its sole discretion, waive or reduce of the fee if the Authority determines that searching and/or furnishing record copies is in the public's interest.
 7. Public records shall be furnished without charge for the first \$20.00 of the fee for each in the following situations:
 - a. An individual who submits an affidavit stating facts showing inability to pay the cost because of indigence and/or that the individual is receiving public assistance. A form Affidavit of Indigence is attached hereto as Exhibit B. An individual may not invoke this discount if the individual has previously received discounted copies of public



records from the Authority twice during the preceding calendar year, or if the individual is requesting the information in conjunction with outside parties who are providing payment to the individual to make the request.). If a requestor is ineligible for the discount, the Authority shall inform the requestor specifically of the reason for ineligibility. If the requestor is eligible, the Authority shall fully note the discount on the detailed itemization.

- b. A nonprofit organization formally designated by the state to advocate the rights of persons with developmental disabilities and/or mental illness, pursuant the Mental Health Code (MCL 330.1931).
- 8. No fees shall be charged for any information that is available to the public on the Authority’s website.
- 9. In the event that the Authority fails to respond to a FOIA Request within the statutorily allotted five (5) business days, the Authority shall reduce its charges for labor in the amount of five percent (5%) per day of delayed response, up to a maximum of a fifty percent (50%) reduction.

VI. COMPLIANCE WITH ALL APPLICABLE LAWS

Authority employees, including Board members, staff, and officers are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal and state waiver, policies, and administrative directives, as amended.

VII. LEGAL AUTHORITY AND REFERENCES

- A. Michigan Freedom of Information Act, PA 442 of 1976, as revised
- B. Michigan Mental Health Code, PA 258 of 1974, as revised
- C. Health Insurance Portability and Accountability Act of 1996
- D. Confidentiality of Alcohol and Drug Abuse Patient Records
- E. Workforce Opportunity Wage Act, 2014 PA 138

VIII. EXHIBIT(S)

- Exhibit A – Fee Itemization Schedule
- Exhibit B – Form FOIA Affidavit of Indigence

Please Check: Policy: New Revised Annual Review

Effective Date:	Reviewed By:	Reviewed Date:	Fiscal Year:
05/26/2014	General Counsel	N/A	2014
07/01/2015	General Counsel	6/26/2015	2015



EXHIBIT A

Fee Itemization Schedule

Component	Cost Calculations	Total
Labor Costs – Search, Location, and Examination	<p>Hourly wage of lowest paid capable employee <u>\$19.65</u></p> <p><u>\$19.65</u> multiplied by the 50% fringe benefit multiplier = <u>\$9.83</u></p> <p><u>\$19.65</u> + <u>\$9.83</u> = <u>\$29.48</u> hourly cost of lowest paid capable employee, divided by 4 (to obtain costs per 15 minute increment) = <u>\$7.37(A)</u></p> <p>Number of 15 minute time increments (“Units”) ___(B)</p> <p style="text-align: right;">_____ (A) x _____ (B) = \$</p>	
Labor Costs – Redaction	<p>Hourly wage of lowest paid capable employee <u>\$48.90</u></p> <p><u>\$48.90</u> multiplied by the 50% fringe benefit multiplier = <u>\$24.45</u></p> <p><u>\$48.90</u> + <u>\$24.45</u> = <u>\$73.35</u> hourly cost of lowest paid capable employee, divided by 4 (to obtain costs per 15 minute increment) = <u>\$18.34(C)</u></p> <p>Number of 15 minute time increments (“Units”) ___(D)</p> <p style="text-align: right;">_____ (C) x _____ (D) = \$</p>	
Labor Costs – Duplication and Copying	<p>Hourly wage of lowest paid capable employee <u>\$14.33</u></p> <p><u>\$14.33</u> multiplied by the 50% fringe benefit multiplier = <u>\$7.16</u></p> <p><u>\$14.33</u> + <u>\$7.16</u> = <u>\$21.49</u> hourly cost of lowest paid capable employee, divided by 4 (to obtain costs per 15 minute increment) = <u>\$5.37(E)</u></p> <p>Number of 15 minute time increments (“Units”) ___(F)</p> <p style="text-align: right;">_____ (E) x _____ (F) = \$</p>	
Non- Paper Physical Media	<p>Actual and most reasonably economical costs of:</p> <p>Flash Drives <u>\$5.00</u> x Number used ___ = \$ _____ (G)</p> <p>Compact Disc <u>\$0.19</u> x Number used ___ = \$ _____ (H)</p> <p style="text-align: right;">_____ (G) x _____ (H) = \$</p>	



Paper Media	Paper (8 ½ x 11) \$ 0.02 x Sheets used _____ =	\$
Mailing	Cost of least expensive postal deliver confirmation \$ _____ (I) Incremental cost of expedited/insured shipping* \$ _____ (J) _____ (I) x _____ (J) =	\$
	*Only upon stipulation of requestor	\$
	Subtotal (K):	\$
Reductions for Delayed Response	Days of late FOIA Request Response ____ x 5% = ____% (L) Subtotal _____ (K) x _____%(J) =	-\$
Statutory Fee Waiver	Subtract indigency fee waiver (\$20) if applicable	-\$
Voluntary Waiver	Subtract amount waived pursuant to Authority determination that production is in the public interest, if applicable.	-\$
Deposit	Subtract any amount previously provided by requestor as a deposit, if applicable	-\$
	Total Due:	\$



EXHIBIT B

Form FOIA Affidavit of Indigence

The Detroit Wayne Mental Health Authority is permitted to charge for its costs in retrieving and duplicating documents requested pursuant to the Michigan Freedom of Information Act.

Pursuant to Section 4 of the Freedom of Information Act, this affidavit is submitted in support of a request that the Detroit Wayne Mental Health Authority waive the fee. I, _____, do affirm or swear under penalty of perjury that: (Check one)

- 1. I am receiving public assistance, or
- 2. I am unable to pay the cost for the following reasons:

Print Name: _____
 Date: _____

Signature of requestor Signed and sworn to before me in
 _____ County, Michigan, on _____.

Notary's signature _____.

Notary's stamp _____.

(Notary's name, county, acting in county, and date commission expires)