

Village of Mayville, Tuscola County, Michigan
Procedures and Guidelines to Implement Freedom of Information Act
(“FOIA”) and Written Public Summary of Procedures, Guidelines, and Fees
for FOIA Requests

1. Summary of Procedures and Guidelines

- a. This document shall serve as the written summary of Village of Mayville’s FOIA procedures and guidelines. This document shall be posted on Village of Mayville’s website and a link to the website must be returned with every response to a FOIA request. A person may request a free paper copy of these procedures and guidelines at Village of Mayville’s office.

2. FOIA Coordinator

- a. The FOIA Coordinator shall be the Village Clerk. If the Village Clerk is unavailable or unable to answer the request the alternate FOIA Coordinator shall be the Village’s Attorney.

3. FOIA Request.

- a. **Form of Request.** A request must be made in writing and provided to the FOIA coordinator of the Village in person, by mail, fax, or email. A writing includes a completed Village FOIA Request Form, or a letter, fax, email or any other “writing.” A verbal request may be submitted, but it is proper for a Village employee to record the request on the Village’s FOIA request form.
- b. **What Can Be Requested.** A person may request to inspect, copy, or receive a copy of a public record. A request must sufficiently describe the public record so as to enable Village employees to identify and find the requested record. The Village is not obligated to create a new public record or make a compilation or summary of information which does not already exist.
- c. **Who May Request.** Anyone may request a public record; there are no residency requirements. However, prisoners in state, county, federal, or other authorized correctional facilities are not entitled to make FOIA requests.
- d. **Time Period of Request.** A person may request to subscribe to future issues of public records that are created, issued, or disseminated by the Village on a regular basis. A subscription is valid for up to 6 months and can be renewed.
- e. **Receiving FOIA Request.**
 - i. A FOIA request is considered “received” for the purpose of determining the time for responding on the business day it is delivered by mail, in person, by hand, to the FOIA coordinator.

- ii. A FOIA request received by facsimile, electronic mail, or other electronic submission is not “received” by the Village’s FOIA coordinator until one (1) business day after the electronic transmission is made. If the electronic mail is sent to the FOIA coordinators spam or junk-mail folder the request is not “received” until 1 day after the FOIA coordinator becomes aware of the request. All Village employees must check their spam or junk-mail folder at least once monthly.
- iii. The FOIA request should be date stamped on the date it is received by the FOIA coordinator, and electronic request should be printed and date stamped on the date received pursuant to the FOIA statute. A log should be kept of all incoming FOIA requests.
- iv. The Village shall keep a copy of all written FOIA requests for public records received by the Village on file for a period of at least one year.

4. Timeline.

- i. **5 Business Days.** Within 5 business days after receiving a request, the Village must respond to a request for a public record by doing one of the following listed in sub-sections a-d below. If no response is sent within 5 business days, it may constitute a final denial.
 - a. Granting the request.
 - b. Issuing a written notice to the requesting person denying the request.
 - c. Granting the request in part and issuing a written notice to the requesting person denying the request in part.
 - d. Issuing a notice extending for not more than 10 business days the period during which the Village shall respond to the request. A Village shall not issue more than 1 notice of extension for any particular request.
- ii. **10 Business Days.** As described herein, the Village may notify the requester in writing for an extension and extend the time for responding to the FOIA request for an additional 10 business days.
- iii. **Appeals.** Within 10 business days of receiving an appeal the FOIA coordinator must respond or extend the time to respond by an additional 10 business days.

5. Responding to FOIA Request.

a. General.

- i. A response to a FOIA request shall be made on the attached FOIA Response Form wherever practical. The Village may respond to a FOIA request using alternative means as deemed appropriate by the Village’s FOIA coordinator or alternate FOIA coordinator.

b. Response Options.

- i. **Granted.** This response will be used if all public records requested in the FOIA request are granted and approved for dissemination to the FOIA requestor. A cover letter, as well as copies of the requested documents may be included. If the Village's FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Village shall 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, should include a specific webpage address where the requested information is available. Importantly, where a FOIA request is granted, the requested public records may not be provided at the time the FOIA request is granted. If the requested public records are not provided at the time that the FOIA request is granted, the Village's response must also contain a best-efforts estimate by the Village regarding the time frame it will take the Village to provide the requested public records to the requestor. The time frame estimate is nonbinding upon the Village, but the Village shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on the State of Michigan's public policy under section 1 of the FOIA statute and the nature of the request in the particular instance.
- ii. **Granted in part.** This response will be used if some of the public records requested in the FOIA request are granted and approved for dissemination to the FOIA requestor. A cover letter explaining the partial denial and reasons for said partial denial should be included. Additionally, to the extent that the request is granted, copies of responsive documents may be included. If the Village's FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Village shall 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, should include a specific webpage address where the requested information is available. Importantly, where a FOIA request is granted in part, the requested public records that were granted and approved for dissemination to the FOIA requestor may not be provided at the time the FOIA request is granted. If said public records are not provided at the time that the FOIA request is granted, the Village's response must also contain a best-efforts estimate by the Village regarding the time frame it will take the Village to provide the granted public records to the requestor. The time frame estimate is nonbinding upon the Village, but the Village shall provide the estimate in good faith and strive to be reasonably accurate and to provide said public records in a manner based on the State

of Michigan's public policy under section 1 of the FOIA statute and the nature of the request in the particular instance.

- iii. **Denied.** This response will be used if no public records are found to exist or be applicable to the FOIA request or if all applicable records are exempt. A letter explaining reasons for denial must be sent to requestor.
- iv. **Deficient Request.** If a request does not sufficiently describe a public record, the FOIA Coordinator may either issue a Notice of Denial indicating the request is insufficient or seek clarification or amendment of the request by the requestor. Any clarification or amendment of the request by the person making the request will be considered a new request, and the timeline for responding to said request will start new from the date that the clarification or amendment is received by the FOIA coordinator.

c. Written Notice of Denial Requirements.

- i. If a requested public record is exempt from disclosure pursuant to the FOIA statute or other applicable Michigan law, an explanation of the basis for denial giving the statute that exempts the record from disclosure will be provided.
- ii. If the requested public record does not exist, a certificate from the Village stating the public record does not exist will be provided.
- iii. If any portion of a requested public record is separated, deleted, or "blacked out," a description of the public record or information that is separated or deleted of "blacked out" will be provided.
- iv. To the extent that a portion or all of a FOIA request is denied, the Village will provide a full explanation of the requestor's right to: (1) submit a written appeal that specifically states the word "appeal" to the head of the Village which identifies the reasons for the requested reversal, or (2) seek judicial review of the denial in Tuscola County Circuit Court within 180 days after the Village's final decision to deny a request. If a person prevails in a circuit court appeal, said person may be entitled to receive their attorney's fees, costs, and disbursements, as well as actual compensatory damages, and punitive damages of \$1,000.00.
- v. The Notice of Denial shall be signed by the FOIA Coordinator or his/her designee.

d. Procedural Safeguards.

- i. Information that must be redacted includes but is not necessarily limited to: (1) social security numbers; (2) exempt information, pursuant to MCL 15.243(1)(a)-(aa); (3) HIPAA protected information; (4) other information that is exempt from disclosure pursuant to the FOIA statute or other applicable Michigan law

e. **Form of Disclosure.**

- i. A disclosure of public records can be made by providing paper copies or non-paper physical media such as computer discs, computer tapes, or other digital or similar media. If the Village's FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Village shall 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, should include a specific webpage address where the requested information is available.
- ii. The requestor may stipulate that the public records be provided on non-paper physical media, emailed, or otherwise electronically provided to him/her/it in lieu of paper copies, unless the Village lacks the technological capability to do so.

6. Fees

- a. **General.** A fee may be charged for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record. Labor costs associated with copying, reproducing, searching, locating, or redacting records may be charged if it would result in an unreasonably high cost to the Village to not charge said fee. The Village may require that payment be made in full for allowable fees before the public record is made available to the requestor.
- b. **Labor cost.** The Village may charge a fee for labor costs as described in this Section.
 - i. The Village may charge a fee for that portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written FOIA request. The Village shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs for the tasks described in this paragraph shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
 - ii. The Village may charge a fee for that portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in section 14 of the FOIA statute. For services performed by an employee of the Village, the Village shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as

provided in section 14 of the FOIA statute, regardless of whether that person is available or who actually performs the labor. Labor costs charged for any activities described in this sub-section shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. The Village will not charge for labor directly associated with redaction under section 14 of the FOIA statute if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the Village's possession. No fee shall be charged under this sub-section if the time to perform the task(s) takes one-half (1/2) hour or less. If the Village does not have an employee who is capable of separating and deleting exempt information, it may use contracted labor. The contracted labor fee shall be computed in the same manner as employee costs, in 15-minute increments, rounding down. The contracted labor hourly wage shall not exceed 6 times the State of Michigan's minimum wage.

- iii. The Village may charge the cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the internet or other electronic means as stipulated by the requestor. The Village shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor. Labor costs under this sub-section may be estimated and charged in time increments of the Village's choosing; however, all partial time increments shall be rounded down.
- c. **Copies.** The Village may charge the actual, incremental copying cost, for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. All copies shall be provided on 8 ½-by-11 inch paper. The fee shall not exceed 10 cents per sheet of paper.
- d. **Non-paper Physical Media.** The Village may charge the actual, incremental cost of the non-paper physical media such as computer discs, computer tapes, or other digital or similar media.
- e. **Mailing.** The Village may charge the actual postage/shipping charges and actual cost of an envelope or mailer. The Village shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor. The Village may charge for the least expensive form of postal delivery confirmation when mailing public records.
- f. **Estimation of Fees and Prepayment.** The Village FOIA Coordinator shall provide a good faith estimate of costs for any disclosure anticipated to cost \$50.00 or more to prepare. A deposit of 50% of the estimated cost shall be required before the process of preparing a disclosure is initiated. Any overage paid to the Village shall be returned. Any additional balance due shall be paid to the Village before the disclosure will be made available to the requestor. The time period to respond to a FOIA request shall be paused while the Village is awaiting the requested deposit.

- g. **Prepayment for Previous Requestor.** If the Village has not been paid in full for a previous FOIA request by a person, the Village may require 100% deposit on any subsequent request if: (1) final fee did not exceed 105% of estimated fee, (2) public records contained the information being sought and are still in the Village's possession, (3) records were made available within the required timeframe, (4) 90 days have passed since the records were ready for pickup, (5) the individual is unable to show proof of payment, (6) the Village provides an itemized estimate of current fees due.
- h. **Limitation on Fees.** The fee must be limited to actual duplication, mailing, and labor costs. The Village shall utilize the most economical means available for making copies of public records.
- i. **Discount for Untimeliness.** Labor costs may be reduced by 5% for each day the Village exceeds the time permitted to respond to a request, with a maximum 50% reduction.
- j. **Waiver for Indigents.** The first \$20.00 of a fee shall be waived for a person who is on welfare or presents facts showing inability to pay because of indigency.
- k. **Waiver for Certain Nonprofits.** The first \$20.00 of a fee shall be waived for a nonprofit organization designated by the state to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act or the Protection And Advocacy For Individuals With Mental Illness Act.
- l. **Limitation for Information Available on Website.** The Village shall not charge for information requested that is available on the Village's website. In this scenario, only a link to the website shall be given as a response to the FOIA request. If a person still requests paper copies of the information, a fee may be charged.

7. Appeals

- a. **Appeal of a Denial of a Public Record.** The FOIA statute provides for the following appeal rights for the denial or partial denial of a requested public record:
 - i. **Appeal to Village.**
 1. A person may appeal a denial or partial denial of a request made under the FOIA statute to the Village President by sending such appeal to the Village c/o the Village FOIA Coordinator at P.O. Box 219, Mayville, MI 48744. The request must be in writing and state the word "appeal." The Appeal request must also identify the reason or reasons for reversal of the denial.
 2. Within 10 days of receiving a written appeal that conforms with Section 7(a)(i)(1) and MCL 15.240, The Village President shall do one of the following:
 - a. Reverse the disclosure denial.
 - b. Issue a written notice to the requesting person upholding the disclosure denial.

- c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
- d. Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Village President shall respond to the written appeal. The Village President shall not issue more than 1 notice of extension for a particular written appeal.

iii. **Appeal to Circuit Court.**

- 1. A person may appeal a denial or partial denial of a request made under the FOIA statute to the Tuscola County Circuit Court within 180 days after the Village's final determination to deny the request.
- 2. If a court that determines a public record is not exempt from disclosure, it shall order the Village to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record.
- 3. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in full in an action commenced in the Tuscola County Circuit Court, the Court shall award reasonable attorney's fees, costs, and disbursements. If the person or Village prevails in part in said action, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements to the prevailing party.
- 4. If the court determines that the Village has arbitrarily and capriciously violated the FOIA statute by refusal or delay in disclosing or providing copies of a public record, the court shall order the Village to pay a civil fine of \$1,000.00, 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 \$1,000.00 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.

- b. **Appeal of an Excessive FOIA Processing Fee.** The FOIA statute provides for the following appeal rights where the Village requires a fee that exceeds the amount permitted under its publicly available FOIA procedures and guidelines or section 4 of the FOIA statute:

i. **Appeal to Village.**

1. If a person believes that a requested fee exceeds the amount permitted under the Village's publicly available FOIA procedures and guidelines or section 4 of the FOIA statute, the person may file with the Village President a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the Village's available procedures and guidelines or section 4 of the FOIA statute.
2. Within 10 business days after receiving a written appeal under subsection (b)(i), the Village President shall do 1 of the following:
 - a. Waive the fee.
 - b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 of the FOIA statute that supports the remaining fee. The determination shall include a certification from the Village President that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4 of the FOIA statute.
 - c. Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 of the FOIA statute that supports the required fee. The determination shall include a certification from the Village President that the statements in the determination are accurate and that the fee amount complies with the Village's publicly available procedures and guidelines and section 4 of the FOIA statute.
 - d. Issue a notice extending for not more than 10 business days the period during which the Village President must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Village President shall not issue more than 1 notice of extension for a particular written appeal.

ii. **Appeal to Circuit Court.**

1. If a person believes that a requested fee exceeds the amount permitted under the Village's publicly available FOIA procedures and guidelines or section 4 of the FOIA statute, the person may institute a civil action in the Tuscola County Circuit Court if:

- a. The Village does not provide for appeals under MCL 15.240a(1)(a).
 - b. The Village President failed to respond to a written appeal as required under this Section.
 - c. The Village President issued a determination to a written appeal as required under MCL 15.240a(2).
2. Within 45 days after receiving notice of the Village President's determination of the appeal, the requesting person may commence a civil action in Tuscola County Circuit Court requesting a fee waiver or reduction.
3. If a Court determines that the Village required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or the FOIA statute, the court shall reduce the fee to a permissible amount.
4. If the requesting person prevails in Court by receiving a reduction of 50% or more of the total fee, the Court may, in its discretion, award all or an appropriate portion of reasonable attorney's fees, costs, and disbursements. The award shall be assessed against the Village liable for damages.
5. If the court determines that the Village has arbitrarily and capriciously violated the FOIA statute by charging an excessive fee, the court shall order the Village to pay a civil fine of \$500.00, 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 \$500.00 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.

VILLAGE OF MAYVILLE, TUSCOLA COUNTY, MICHIGAN FOIA REQUEST FEE WORKSHEET

Cost may only be charged if a copy of a public record is requested. No fee may be charged for an individual to simply review public records.

Date request received: _____ Date of Response: _____

Record(s) requested:

I. Duplication Costs

Copy Cost:

$$\frac{\text{_____}}{\text{Cost per copy}} \times \frac{\text{_____}}{\text{Number of copies}} = \frac{\text{_____}}{\text{Total copy cost}}$$

Nonpaper Physical Media / Electronic Record Cost:

$$\frac{\text{_____}}{\text{Cost per CD}} \times \frac{\text{_____}}{\text{Number of disks}} = \frac{\text{_____}}{\text{Total disk cost}}$$

$$\frac{\text{_____}}{\text{Cost per other electronic media}} \times \frac{\text{_____}}{\text{Number}} = \frac{\text{_____}}{\text{Total other electronic cost}}$$

II. Mailing Cost:

$$\frac{\text{_____}}{\text{Cost per envelope}} \times \frac{\text{_____}}{\text{Number of envelopes}} = \frac{\text{_____}}{\text{Total envelope cost}}$$

Plus Postage:

- U.S. Mail
- Fed Ex
- UPS
- Other: _____

$$+ \frac{\text{_____}}{\text{Total Postage Cost}}$$

$$= \frac{\text{_____}}{\text{Total Mailing Cost}}$$

III. Labor Cost:

$$\frac{\text{Hourly labor rate}}{\text{Hourly labor rate}} \times \frac{\text{Fringe benefit multiplier}}{\text{Fringe benefit multiplier}} \times \frac{\text{Number of hours}}{\text{Number of hours}} = \frac{\text{Total labor cost}}{\text{Total labor cost}}$$

IV. Total Charges

$$\frac{\text{Duplication costs}}{\text{Duplication costs}} + \frac{\text{Mailing costs}}{\text{Mailing costs}} + \frac{\text{Labor costs}}{\text{Labor costs}} = \frac{\text{Total}}{\text{Total}}$$

**VILLAGE OF MAYVILLE, TUSCOLA COUNTY, MICHIGAN
FOIA REQUEST FORM**

Date: _____

Requested by: _____

Name

Address

City, State

Phone: _____

Method of Request: Mail In-Person Fax E-Mail Oral

Description of Requested Public Records (be as specific as possible):

Requested Method of Delivery: Paper Copies (please mail) Paper Copies (will pick-up)
E-Mail On-Site Record Inspection Other: _____

Who Received Request: _____

Date Received: _____ **Effective business date of receipt:** _____

FOIA Coordinator's Signature: _____

PLEASE FORWARD TO VILLAGE CLERK IMMEDIATELY

**VILLAGE OF MAYVILLE, TUSCOLA COUNTY, MICHIGAN
FOIA RESPONSE FORM**

Village of Mayville’s procedures, guidelines, and fees for FOIA requests are maintained on the Village’s website, at the following link: <http://www.nhVillage.com/>

Response to FOIA Request:

1. Granted.

2. Granted in part. Explanation for partial denial:

3. Denied. Explanation of denial:

4. Deficient Request. Explanation:

Please be advised that the requesting party may submit to the head of the Village a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the disclosure denial or partial disclosure denial. If you choose to institute an appeal with the Village, within 10 business days of receiving the written appeal, the Village President (or his designee) will do one of the following:

- Reverse the disclosure denial.
- Issue a written notice to the requesting person upholding the disclosure denial.
- Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than one notice of extension for a particular written appeal.

The requesting party may also seek judicial review of the denial under section 10 of the FOIA statute. If, after judicial review, the court determines that the Village has not complied with the FOIA statute and orders disclosure of all or a portion of a public record, the requesting party may be entitled to receive attorneys' fees and damages as provided in section 10 of the FOIA statute. Any civil action must be commenced within 180 days of the Village's final determination to deny the request.

VILLAGE FOIA COORDINATOR: _____

Date: _____