



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
POLICY AND PROCEDURE MANUAL
POLICY

CHAPTER
Policy/Legislation

NUMBER
6.6

EFFECTIVE DATE
November 1, 2004

SUBJECT
FOIA POLICY

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A. PURPOSE

The Department of Community Health is a public body required by law to provide public records to persons requesting public records unless those records are exempt from public disclosure by the Freedom of Information Act (FOIA) or some other statute.

The policy contained in this transmittal is intended to ensure uniformity of practice and procedures in the release of public records and in the fees charged for the cost of processing a request for public records.

B. REVISION HISTORY

Rescinds and replaces 01-C-1116(e)/GL-02 effective 01/17/2000.

C. DEFINITIONS

"Fees" are department charges to a FOIA requestor for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Fees shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information. A fee of .25/page will be applied for all copies, in addition to any labor charges incurred.

"FOIA Coordinator" means the person designated by this department with the primary responsibility to accept and process requests for public records.

"FOIA Representative" means the person designated by the FOIA Coordinator to accept and process requests for public records on behalf of the FOIA Coordinator.

"FOIA Request" is a written request submitted to the department that describes a record sufficiently.

"Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

"Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function. Public record does not include computer software. The FOIA separates public records into the following 2 classes:

- (i) Those that are exempt from disclosure under section 13.
- (ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

"Requestor" means the person (see definition of person) making the request for documents under the FOIA.

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drum, or other means of recording or retaining meaningful content.



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D. POLICY

GENERAL INFORMATION:

1. All documents in the Department's possession are public records subject to the FOIA, for which a disclosure determination is made by the FOIA Coordinator. This shall include documents in the Department's possession that are created by another agency (e.g., Family Independence Agency, CMS, etc.). However, documents which are possessed only by another agency or an entity under contract with the Department do not constitute the public records of the department.
2. FOIA requests may be submitted in person or via mail, facsimile machine or electronic mail. Except as set forth in paragraph 3, any written request for a document shall be considered a FOIA request, regardless of whether the FOIA is mentioned.
3. The following types of requests shall be forwarded to the Office of Legal Affairs for the proper processing:
 - a. A request from a governmental agency, including a court, which is entitled by law to receive the information or documents requested (e.g., a request under the Michigan Unemployment Compensation Act or from the Office of the Legislative Corrections Ombudsman, the Family Independence Agency, the Auditor General, or another jurisdiction seeking certification of a prisoner's incarceration with the Department).
 - b. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents). All discovery requests shall be referred to the appropriate litigation coordinator, as set forth in the department's Lawsuit Policy.
 - c. A request from the Department of Attorney General for documents that are needed for pending litigation. Such requests shall be referred to the appropriate litigation coordinator.
 - d. A request from a private or governmental agency for employee personnel information which the employee has authorized to be released (e.g., employment verification to a lending institution or prospective employer). Such requests shall be referred to the appropriate personnel office.
 - e. A request from an employee to inspect his/her personnel or medical files, or to receive one copy of the documents in those files. Such requests shall be referred to the appropriate personnel office.
 - f. A request from a collective bargaining unit, pursuant to its contract, for documents related to a disciplinary matter. Such requests shall be referred to the appropriate personnel office. The appropriate personnel office shall be advised of requests processed under the FOIA.
 - g. Documents required to be produced by a subpoena or other court order.
 - h. A request from a news media representative.
 - i. A request from a law enforcement agency.



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DEPARTMENT FOIA COORDINATOR/BUREAU COORDINATOR/FOIA REPRESENTATIVES:

4. Pursuant to Section 6 of the FOIA, the FOIA Coordinator for the Department shall be the Director of the Office of Legal Affairs, or designee thereof. Local FOIA representatives shall be designated to act on behalf of the Department FOIA Coordinator to accept and process FOIA requests received at the following locations:

The Department FOIA Coordinator is responsible for the following:

- All FOIA requests received for the Director's Office, Medical Services Administration, Health Policy, Regulation and Professions Administration (with the exception of the Bureau of Health Systems and the Bureau of Health Professions), Public Health Administration, Mental Health and Substance Abuse Administration, Developmental Disabilities Council and the Office of Services to the Aging.
- Responding to all questions concerning FOIA requests.

5. The Bureau of Health System's FOIA Coordinator is responsible for all FOIAs received within its Bureau.

The Bureau of Health Professions' FOIA Coordinator is responsible for all FOIAs received within its Bureau.

6. A FOIA representative shall be designated at each Hospital and Mental Health Center as identified by the Director of each center. A FOIA representative may also be designated for the personnel office and the record office at the institution.

7. All persons designated to process FOIA requests shall comply with the following:

- Maintain monthly statistics on the number of FOIA requests processed and forward the statistics to the Department FOIA Coordinator on a quarterly basis. The Department FOIA Coordinator shall generate Department-wide statistical reports.
- Maintain a copy of all FOIA requests received and all completed Responses to Request for Public Records - FOIA form (DCH 0148(e)). These documents shall be retained in accordance with the Department's Retention and Disposal Schedule, but for no less than one year, in accordance with Section 3(2) of the FOIA.

PROCESSING FOIA REQUESTS:

8. A FOIA request received by an employee shall be immediately forwarded by fax transmittal or hand delivery to the appropriate FOIA coordinator or FOIA representative. The appropriate FOIA coordinator/representatives shall respond to the request within five business days after the department receipt, using the Response to Request for Public Records - FOIA form (DCH 0148(e)). A request received by facsimile or electronic mail shall be considered received on the business day following the date of transmission. If additional explanation of the basis of FOIA or other statute for non-disclosure is needed, an attachment may accompany the response form.



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9. A ten business day extension may be taken by the appropriate FOIA coordinator/representative if necessary, using the Response to Request for Public Records - FOIA form (DCH 048(e)), within the timeframe allowed pursuant to Section 8 of this policy. The extension must notify the requestor that the ten-business day extension is being taken, the reason for the extension, and the new date for response.
10. The appropriate FOIA coordinator/representative shall review the request and determine whether the department possesses non-exempt records responsive to the request. The Department shall provide existing, non-exempt public records under the name given by the requestor or by another name reasonably known to the Department.
 - The FOIA does not require a public body to make a compilation, summary or report or information, except as required by Section 11 of the FOIA. However, it is not prohibited.
 - The FOIA does not require a public body to create a new public record, except as required in Section 11 of the FOIA. However, it is not prohibited.

The extracting of certain fields within a database is acceptable if other fields of the database are exempt under the FOIA. Contact the Department FOIA Coordinator for questions in this area.

11. The appropriate FOIA coordinator/representative shall be responsible for obtaining the requested documents that are in the Department's possession. If the Department does not have the document requested, the local FOIA coordinator is not required to obtain it from outside the Department, including from another agency or an entity under contract with the Department, in order to comply with the request.
12. The appropriate FOIA coordinator/representative shall carefully review the documents obtained to ensure information and documents exempt from disclosure are not provided. Only those exemptions set forth in the FOIA, which are listed on the back of the Response to Request for Public Records - FOIA form (DCH 0148(e)), shall be used. If more than one exemption applies to a particular request, all relevant exemptions shall be indicated on the form when responding to a FOIA request. An explanation as to what was exempted shall be stated on the form.
13. If only a portion of a document is exempt, the exempt portion shall be deleted and the non-exempt portion of the document shall be disclosed. The local FOIA coordinator shall ensure exempt portions of a document are not legible on the copy provided.

EXEMPTIONS UNDER FOIA:

14. The exemptions allowed by the FOIA are expressed in general language, which must be applied to the specific document requested. It is impossible to list all exempt information or documents; therefore, local FOIA coordinators must be familiar with all exemptions listed on the back of the Response to Request for Public Records - FOIA form (DCH 0148(e)). The following are some of the exemptions which are most frequently used and examples of the items to which the exemptions may apply:
 - A. Clearly unwarranted invasion of an individual's privacy. Exemption 13(1)(a).
Examples - Home addresses and home telephone numbers, personal cellular phone numbers.
 - B. Information which is preliminary to a final agency decision unless it is purely factual and the public interest warrants disclosure. Exemption 13(1)(m).

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Examples - Interview notes; Internal Affairs, harassment and sexual harassment investigations prior to completion. (Note: Portions or all of an investigation may be exempt after completion for other reasons, e.g., privacy or security concerns.)

- C. The FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute, Exemption 13(1)(d).

Examples – Documents and/or information protected under the Mental Health Code.

- D. Any document or information determined to be confidential by a hearing officer at a hearing conducted pursuant to Administrative Rule 791.3315.
- E. The home addresses, home telephone numbers, and other information contained within the personnel files of a Department employee, unless the requestor is the employee. However, the employee's name, age (not date of birth), past and present positions with the Department and length of service in a position shall be provided to any requestor. For purposes of this exemption, personnel files include medical and expunging files maintained on an employee.
- F. Information which is subject to a specific privilege (e.g., attorney-client, doctor-patient, psychologist-patient), except if the requestor has a signed release from the client or patient that is HIPAA compliant. Exemption 13(1)(g) & (h).
- G. Information or records that would disclose the social security number of any individual. Exemption 13(1)(w).
- H. Information or records relating to a civil court action in which the requesting party and the Department are parties.

FEES:

15. Except as set forth below, all FOIA requestors shall be charged .25 cents per page. FOIA requests incurring total fees and costs under \$10.00 will not be charged. If a portion of a document must be redacted and recopied prior to production, the FOIA requestor shall be charged only for the copy provided.
16. A requestor shall not be charged for the first \$20.00 of a FOIA fee, where requestor has submitted an affidavit verifying that s/he is receiving public assistance or sufficiently stating facts showing an inability to pay the cost due to indigence. Questions concerning the waiver of fees should be directed to the Department FOIA Coordinator.
17. The actual cost of copying, including the duplication of CDs, diskettes, audio tapes, video tapes and related items, shall be charged at the hourly rate of the lowest-paid clerical employee (e.g., General Office Assistant E6, Secretary 9), except as provided for in paragraph 20, shall include appropriate labor charges.
18. The Department may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record.



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19. In cases where a fee will be charged, the FOIA request shall be approved specifying the amount assessed and indicating that the documents will be provided after payment is received in full. If the amount assessed will exceed \$50.00, exclusive of any waived amounts, a 50% deposit shall be required before processing of the request begins. Upon completion of processing, the balance must be paid before the documents are delivered to the requestor.

INSPECTION:

20. The FOIA also requires that at the request of the person making the request, a reasonable opportunity for inspection of non-exempt public documents shall be allowed during normal business hours. The appropriate FOIA coordinator/representative must remove exempt material prior to the inspection. There is no charge for inspection of documents, although a fee may be charged if it is necessary to make a copy of a document in order to delete a portion that is exempt. There may be charge to supervise the inspection of records. A fee will be charged if it is necessary to make a copy of a document in order to delete a portion that is exempt.

APPEAL OF DENIAL

21. A requestor whose request has been denied in full or in part may appeal the denial to the Director. The appeal shall state the word "appeal" and identify the reason or reasons for the reversal of the denial. The Director may reverse the initial denial determination or uphold the initial denial determination or a combination thereof.

OPERATING PROCEDURES

22. The Director shall ensure that within 60 days of its effective date, procedures necessary to implement this policy directive are developed.

EXHIBITS:

23. Attached to this policy you will find the following exhibits:
- A. DCH-0148, Response to Request for Public Records - FOIA.
 - B. DCH-0704, FOIA Fee Calculation Record.
 - C. DCH-0383, Statement of Fees for Freedom of Information Act Requests.
 - D. Sample FOIA Log Sheet.

OTHER AVAILABLE INFORMATION:

- A. Listing of current FOIA Coordinator and Representatives
- B. Listing of section 13(1) exemptions



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E. REFERENCES

Civil Service Rule 1-6.1.

F. CONTACT

Director (517) 241-0048
Office of Legal Affairs
Health Policy, Regulation and Professions Administration

Legal Affairs Coordinator (517) 373-3772
Office of Legal Affairs
Health Policy, Regulation and Professions Administration

APPROVED BY:

Jared Olszewski

**RESPONSE TO REQUEST FOR PUBLIC RECORDS -
FREEDOM OF INFORMATION ACT**

Michigan Department of Community Health

Date of Response	FOIA Request
Request Type:	
<input type="checkbox"/> Original	<input type="checkbox"/> Additional Info.

Dear _____,

This letter is in response to your request dated _____, received in this office on
for **COPIES** **INSPECTION** of the following record(s):

Exhibit "A"

Your request for public records has been reviewed and the following action(s) has been taken in compliance with the provisions of the State of Michigan's Freedom of Information Act.

1. **REQUEST APPROVED:**
This request involves too many documents to be processed within standard time frames. Your request will be processed as soon as staff have completed the copying. *MDCH STAFF: If this box is checked, you must provide another copy of this form when the documents are forwarded to the requestor. Also, check either box 2 or 3.*
2. **REQUEST APPROVED:** Your requested documents are enclosed.
3. **REQUEST APPROVED IN PART and DENIED IN PART:** *(See comments on next page).*
4. **REQUEST DENIED:**
This agency has determined that the record(s) you have requested are exempt from disclosure based on the provisions of the Freedom of Information Act. *(See comments on next page).*
5. **REQUEST DENIED:**
The record(s) you have requested do NOT exist within the records of this agency.
6. **REQUEST DENIED:**
Your request does NOT describe the record(s) sufficiently to enable us to determine what record(s) you are seeking. Please submit a new request describing the record(s) in greater detail.
7. The specific nature of your request involves a circumstance which requires an additional **10 business days** to properly process your request as provided by Sec. 6(5) of the Freedom of Information Act.
The extension due date is _____. The reason for this extension is: _____

UNDER SECTION 10 OF THE FREEDOM OF INFORMATION ACT, IF A PUBLIC BODY MAKES A FINAL DETERMINATION TO DENY ALL OR A PORTION OF YOUR REQUEST, YOU MAY DO ONE OF THE FOLLOWING:

- (1) Submit to the head of the public body, a written letter that states the word "APPEAL" and identifies the reason or reasons for reversal of denial.
- (2) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.
- (3) Pursuant to MCL 15.235(5)(4)(e) this serves as notice of the right to receive attorneys' fees and damages as provided in Section 10, if after judicial review, the circuit court were to order disclosure of all or a portion of the document(s) requested.

Signature of FOIA Coordinator or Representative	Name of Responding Office
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See Reverse Side for Non-discrimination Information

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. MCL 15.243, Sec. 13(1). (Check ALL that apply)

- (a) Information of a personal nature where the public disclosure of the information would constitute unwarranted invasion of an individual's privacy.
- (c) A public record that, if disclosed, would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of mental disability, unless the public interest in disclosure under this act outweighs the public interest in disclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
[Cite:] Explain in comments below.
- (e) A public record described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally given rise to the exempt nature of the public record remain applicable.
- (g) Information or records subject to attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege, psychologist-patient privilege, the minister, priest or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- (i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- (l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by disclosure of those facts or evaluation.
- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in a particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under the state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.
- (p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only one bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.
- (t) Except as otherwise provided in this subdivision, records and information to an investigation or a compliance conference conducted by the department of labor and economic growth under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records and information pertaining to 1 or more of the following:
 - (i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.
 - (ii) The fact that an allegation was received by the department of labor and economic growth; the fact that the department of labor and economic growth did not issue a complaint for the allegation; and the fact that the allegation was dismissed.
- (u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- (v) Records or information relating to a civil action in which the requesting party and the public body are parties.
- (w) Information or records that would disclose the social security number of any individual.

Comments:
Description of Information Deleted or Separated from the Public Record Requested:
Exemption Not Listed Above:

The Department of Community Health will not discriminate against any individual or group because of race, sex, religion, age, national origin, marital status, political beliefs, or disability.

FOIA FEE CALCULATION RECORD

Michigan Department of Community Health

FOIA Request Number

Requester's Name	Date of Request
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INSTRUCTIONS:

Complete all applicable areas. Do NOT fill in the shaded areas.
 The calculations are pre-programmed, do not alter them.
 The NUMBER OF HOURS should be based on 1/10 hour increments = 6 minutes.
 Fringe Benefits are based on FY 99-2000. (adding 33% = multiplying by 1.33 OR multiplying by 133%)

Exhibit "B"

Column A ITEM DESCRIPTION	Column B RATE	Column C QUANTITY	Column D FRINGE BENEFITS (add 33%)	Column E ITEM CHARGE
1 Locating or Retrieving Records	Hourly Wage X	No. of Hours +	133% =	\$ -
2 Reviewing Records	Hourly Wage X	No. of Hours +	133% =	\$ -
3 Separating Exempt from Non-exempt Materials	Hourly Wage X	No. of Hours +	133% =	\$ -
4 Assisting with On-site Review / Security	Hourly Wage X	No. of Hours +	133% =	\$ -
5 Photocopying Records	Cost per Sheet \$ 0.25 X	No. of Sheets	=	\$ -
6 Duplicating Records on Computer Disk(s)	Cost per Disk X	Number Used	=	\$ -
7 Off-Site Copy Costs (actual)			=	
8 Small Envelopes	\$ 0.05 X	Number Used +	=	\$ -
9 Large Envelopes	\$ 0.10 X	Number Used +	=	\$ -
10 Mailing Costs (actual)			=	
11 SUB-TOTAL:				\$ -
12 Indigent Waiver Credit				\$ -
13 NET TOTAL:				\$ -

Information to be transferred to form DCH-0383 (Statement of Fees for FOIA Requests):

Field #1 (of DCH-0383) Total Labor Charges (sum of rows 1 - 4, column E)	\$ -
Field #2 (of DCH-0383) Total Copying and Duplicating Costs (sum of rows 5 - 7, column E)	\$ -
Field #3 (of DCH-0383) Total Shipping and Handling Costs (sum of rows 8 - 10, column E)	\$ -

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Exhibit "C"

STATEMENT OF FEES FOR FREEDOM OF INFORMATION ACT REQUESTS

Michigan Department of Community Health

Date of Statement	FOIA Request No.
Statement: <input checked="" type="checkbox"/> FIRST <input type="checkbox"/> FINAL	
FOIA Requester Name	

IMPORTANT:

This statement shows the fees, which will be charged to you because of your request under the Freedom of Information Act. See the transaction checked below.

- Arrangements for personal inspection have been made. Photocopies are enclosed. Please send the fee (shown in item #6 below) **at this time.**
- Photocopies or Diskettes are enclosed. Please send the fee (shown in item #6 below) **at this time.**
- This Department requires a **DEPOSIT before** this request can be processed.
 - Please send the deposit (shown in item #7 below) **at this time.**
 - You will be billed for any remaining costs **PRIOR** to the materials being sent to you.
- You have already made a deposit of \$ _____, and this is the **REMAINDER** of the final cost.
 - Please send the amount (shown in item #8 below) **at this time.**
 - **You will be sent the documents AFTER** the remainder of the fee has been sent.

INSTRUCTIONS:

- Please make your check payable to: **"STATE OF MICHIGAN"**
- Mail a copy of this form and your check to:

**ACCOUNTING DIVISION - FOIA
 MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
 PO BOX 30437
 LANSING MI 48909-7937**

CHARGES: **Actual Amount** **Estimated Amount**

1. LABOR charges for searching for, examining of, and separation of exempt materials from non-exempt materials:	\$
2. DUPLICATION costs for photocopying documents or providing computer diskettes:	\$
3. SHIPPING and HANDLING charges:	\$
4. SUB-TOTAL CHARGE: (Sum of Lines 1 through 3)	\$
5. Indigent Waiver Credit (minus \$20.00 if applicable)	\$
6. NET TOTAL CHARGE: (Line 4 minus Line 5)	\$
7. DEPOSIT REQUIRED NOW (if any):.....	\$
8. REMAINDER REQUIRED NOW: (Line 6 minus Line 7)	\$

For Department of Community Health Office Use Only

Agency Code 391		Index 08200	Name of FOIA Coordinator or Representative Mary A. Greco FOIA 2004/
PCA 82003	Object Code 7611	Amount \$	Return To: Department of Community Health Lewis Cass Building- 6 th Floor Lansing, Michigan 48933
PCA	Object Code	Amount \$	

The Department of Community Health is an equal opportunity employer, services, and programs provider.

Freedom of Information Act Requests for 2004

FOIA Number	2004/697	Date of Request		Due Date	
Name of Requestor					
Address of Requestor					
Phone Number					
Description of Documents					
FOIA Assigned To		Bureau/Division			
Follow Up		Date Request Completed:			
		Timely Response			
Outcome					
Appeal					
Charge for Request					
Comments					