

Freedom of Information Act Procedures and Guidelines



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Preamble: Statement of Principles

The Washtenaw County Road Commission (WCRC) recognizes a legal obligation to disclose all nonexempt public records in its possession by request under the Michigan Freedom of Information Act (FOIA). WCRC's policy for all FOIA requests is to respond to the requests in a consistent, fair and even-handed manner regardless of who makes a request and comply with state law in all respects.

WCRC also acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA to ensure the effective operation of government and to protect the privacy of individuals.

WCRC will protect the public's interest in disclosure while balancing the requirement to withhold or redact portions of certain records.

Section 1: General Policies

In their discretion, the FOIA coordinator may implement administrative rules consistent with state law and these procedures and guidelines to administer the acceptance and processing of FOIA requests.

WCRC is not obligated to create a new public record or compile or summarize information that does not already exist. Neither the FOIA coordinator nor other WCRC staff is compelled to answer questions in requests for public records or regarding the content of the documents themselves.

The FOIA coordinator shall keep a copy of all written requests for public records received by WCRC on file for at least one year.

Per PA 442 of 1976, a person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record.

WCRC shall provide reasonable facilities and opportunities to examine and inspect public records during regular business hours. The FOIA coordinator is authorized to promulgate rules regulating how records may be viewed to protect WCRC records from loss, alteration, mutilation or destruction and prevent excessive interference with normal WCRC operations.

Staffing

By law, the managing director is the FOIA coordinator. The managing director has designated the office coordinator to serve as WCRC's FOIA coordinator.

Email: foia@wcroads.org

Phone: (734) 327-6645

In addition, the communications manager is also authorized to act as a FOIA coordinator designee.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by WCRC must do so in writing. The request must sufficiently describe a public record to enable WCRC personnel to identify and find the requested public record.

Written requests for public records may be submitted in person, by mail, through the web form available online at wcroads.org or by email to foia@wcroads.org.

Within the FOIA request, a person may request that public records be provided on non-paper physical media, electronically mailed instead of paper copies. WCRC will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may also regularly subscribe to future issues of public records created, issued or disseminated by WCRC on a regular basis. A subscription is valid for up to 6 months and maybe renewed by the subscriber.

If a person makes a verbal, non-written request for information believed to be available on WCRC's website, the employee receiving the request shall inform the person making the request of the pertinent website address where practicable and to the best ability of the employee receiving the request.

Requests Received Electronically

To ensure a prompt response, e-mail requests should contain the term "FOIA" or "FOIA Request" in the subject line and be sent to foia@wcroads.org.

If a request for a public record is sent via email to foia@wcroads.org or received through the web form online at wcroads.org, the request is deemed to have been received on the following business day.

If a request is sent by email and delivered to WCRC's spam or junk-mail folder, the request is not deemed received until one day after the FOIA coordinator first becomes aware of the request. The FOIA coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA coordinator became aware of the request.

The FOIA coordinator shall review WCRC's spam and junk-email folders on a regular basis, which shall be no less than once a month. The FOIA coordinator shall work with IT staff to develop administrative rules for handling spam and junk-mail so as to protect WCRC's systems from computer attacks which may be imbedded in an electronic FOIA request.

Section 3: Processing a Request

Upon receiving a request, WCRC will issue a response within 5 business days of receipt, unless otherwise agreed to in writing by the person making the request.

WCRC will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in-part and issue a written notice denying in-part the request.
- Notify the requestor that due to the nature of the request WCRC needs an additional 10 business days to respond.
 - Only one such extension is permitted per request.
- Issue a written notice indicating that the public record requested is available at no charge on WCRC's website.
- Request clarification or an amendment to the request if the original request does not sufficiently describe a public record. Any clarification or amendment will be considered a new request subject to the timelines described in this section.

The FOIA coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Denied or Partially Denied Requests

If the request is denied or denied in-part, the FOIA coordinator will issue a *Notice of Denial* which will explain the denial with one of the following applicable explanations:

- An explanation as to why a requested public record is exempt from disclosure.
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by WCRC.
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record.

In addition, the *Notice of Denial* will include an explanation of the person's right to submit an appeal of the denial to either the WCRC Board or seek judicial review in the Washtenaw County Circuit Court; and an explanation of the right to receive attorneys' fees, costs and disbursements as well as actual or compensatory damages, civil fines and punitive damages, should they prevail in Circuit Court.

Section 4: Fees

A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to WCRC because of the nature of the request in the instance, and WCRC specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine if a request would result in an unreasonably high cost to WCRC:

- The request incurs costs greater than incurred from the typical or usual request received by WCRC.
- Volume of the public record requested.
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- The staffing required to respond to the request.
- Any other similar factors identified by the FOIA coordinator in responding to the request.

Calculation of Fees

If WCRC has determined that a FOIA request meets at least one of the factors outlined above, WCRC may charge for the following costs associated with processing a FOIA request:

- Labor costs
 - Directly associated with searching for, locating and examining a requested public record.
 - Directly associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
 - Directly associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The cost of USB drives or other file sharing mechanisms used to provide the requested records to the requestor.
- The material cost of duplication or printing of paper copies of public records.
- The actual cost of mailing a public record.

Labor Costs

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid WCRC employee capable of doing the work in the specific fee category, regardless of who performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. WCRC may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

Cost of USB Drives and Other File Sharing Devices

If requested, WCRC can provide the requested records electronically using a USB drive, a cloud sharing software tool or other file sharing device. If the requestor chooses to receive files on a USB drive or other physical file sharing device, WCRC will provide the USB drive or file sharing device and the requestor will be charged the actual cost of each device used.

To ensure the integrity and security of WCRC's technological infrastructure, WCRC cannot use a USB or other file sharing device provided by the requestor.

Cost of Duplication and Printing

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8½" x 11"), or legal (8½" x 14") sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- WCRC may provide records using double-sided printing.

Cost of Postage

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- WCRC may charge for the least expensive form of postal delivery confirmation.
- Expedited shipping and insurance will not be used or charged unless requested.

Payment of Fees

If the request is granted in-full or in-part, full payment is required prior to the release of the compiled records. The FOIA coordinator shall provide a detailed itemization of the costs incurred to the requestor.

Deposit Requirements

WCRC will require a 50% deposit prior to processing a request, if:

- The cost of processing a FOIA request is expected to exceed \$50, or
- The requestor has not fully paid for a previously granted request.

In requesting a 50% deposit, the FOIA coordinator shall provide the requestor with a detailed itemized estimate of the allowable costs incurred by WCRC to process the request and provide the best-efforts estimate of a timeframe it will take WCRC to provide the records to the requestor. The best-efforts estimate shall be nonbinding on WCRC but will be made in good faith and will strive to be reasonably accurate.

If a deposit is required, WCRC staff will not begin to search for the requested public records until the deposit has been made. If a deposit is not received by WCRC within 48 days after notifying the requestor of the deposit requirement, the request will be considered abandoned and WCRC will have no obligation to fulfill the request.

Previously Unpaid FOIA Requests

If WCRC receives a request for public records from a person who has an unpaid invoice for a previously granted request, the FOIA coordinator will require a deposit of 100% of the estimated fees before beginning to search for a public record for any future request by that person, if all of the following apply:

- The final fee for the previously granted request is not more than 105% of the estimated fee.
- The public records from the previously granted request remain in the WCRC's possession.
- The public records from the previously granted request were made available to the individual, subject to payment, within the time frame estimated by WCRC to provide the records
- 90 days have passed since the FOIA coordinator notified the individual in writing that the public records were available for pickup or mailing.
- The individual is unable to show proof of prior payment to WCRC.

Discounts for Untimely Response

If the FOIA coordinator does not respond to a written request in a timely manner, WCRC will reduce the labor costs by 5% for each day WCRC exceeds the time permitted under FOIA, up to a 50% maximum reduction, if any of the following applies:

- The late response was willful and intentional.
- The FOIA request was a clearly written request, meaning either:
 - A request for information was conveyed in the first 250 words of the body of a letter, email or email attachment sent to WCRC.
 - The written request included the words, characters, abbreviations for “freedom of information”, “information”, “FOIA”, “copy” or a recognizable misspelling of such, or legal code reference 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or fax cover page.

When applicable, the discount will be noted on the *Detailed Itemization of Costs* form.

Waiver of Fees

There are limited cases where the FOIA coordinator can decide to waive or reduce the cost of processing a FOIA request, including:

- A matter benefitting the general public.
- The requestor has demonstrated an inability to pay.
- The request is coming from a non-profit agency helping people with developmental or mental disabilities.

An individual is not eligible to receive a waiver or reduction in cost if:

- The requestor has previously received discounted copies of public records from WCRC twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

Public Interest

The cost of processing a FOIA request may be waived or reduced if, in the FOIA coordinator's sole judgment, a waiver or reduced fee is in the public interest.

Inability to Pay

The FOIA coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

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

Non-Profit Agency Helping People with Developmental or Mental Disabilities

The cost of processing a FOIA request may be waived or reduced if the request comes from a nonprofit organization designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request meets all the following requirements:

- Is made directly on behalf of the organization or its clients.
- Is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931.
- Is accompanied by documentation of its designation by the state.

Section 5: Appeals

Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, they may file an appeal of the denial with the WCRC Board.

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. An appeal is not considered received until the first regularly scheduled meeting of the WCRC board following the submission of the written appeal. Once received, the WCRC Board will respond, in writing, within 10 business days.

The WCRC Board has the ability to take the following actions:

- Reverse the disclosure denial.
- Uphold the disclosure denial.
- Reverse the disclosure denial in-part and uphold the disclosure denial in-part.

Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the WCRC Board may issue not more than one notice of extension for not more than 10 business days to respond to the appeal.

Right to File Civil Action

Whether or not a requestor submitted an appeal of a denial to the WCRC Board, they may file a civil action in Washtenaw County Circuit Court within 180 days after WCRC's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will order WCRC to produce all or a portion of the public record being wrongfully withheld and award the requestor reasonable attorneys' fees, costs and disbursements. If the court determines that the requestor prevails only in part, the court, in its discretion, may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that WCRC arbitrarily and capriciously violated FOIA by refusing or delaying disclosing copies of a public record, it shall award the requestor punitive damages of \$1,000. The court shall also order that WCRC pay a civil fine of \$1,000 to the general fund of the State Treasury.

Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by WCRC to process a FOIA request exceeds the amount permitted by state law, they must first submit a written appeal for a fee reduction to the WCRC Board.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. An appeal is not considered received until the first regularly scheduled meeting of the WCRC board following the submission of the written appeal. Once received, the WCRC Board will respond, in writing, within 10 business days.

The WCRC Board has the ability to take the following actions:

- Waive the fee.
- Reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the WCRC Board that the statements in the determination are accurate and the reduced fee amount complies with these procedures and guidelines.
- Uphold the fee and issue a written determination indicating the specific basis that supports the required fee, accompanied by a certification by the WCRC Board that the statements in the determination are accurate and the fee amount complies with these procedures and guidelines

The WCRC Board may issue not more than one notice of extension for not more than 10 business days to respond to the appeal.

Right to File Civil Action

Within 45 days after receiving notice of the WCRC Board's determination of a fee appeal, a requestor may commence a civil action in Washtenaw County Circuit Court for a fee reduction.

If a civil action is filed appealing the fee, WCRC is not obligated to process the request for the public record until the court resolves the fee dispute.

If the court determines that WCRC required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the requestor in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or an appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the court determines that WCRC has acted arbitrarily and capriciously by charging an excessive fee, the court shall order that WCRC pay a civil fine of \$500 to the general fund of the State Treasury. The court may also award the requestor punitive damages in the amount of \$500.

Penalty for Violation of the Act

If the court determines in either an appeal of a denial of a public record or the appeal of an excessive fee, that the public body willfully and intentionally failed to comply with FOIA or otherwise acted in bad faith, then in addition to any another award or sanction, the court shall impose a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence.

The court is required to consider the budget of WCRC and whether WCRC has previously been assessed penalties for violations of the FOIA.

The civil fine is to be deposited to the general fund of the State Treasury.

Section 6: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these procedures and guidelines conflict with previous FOIA policies promulgated by the WCRC Board or administration, these procedures and guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA coordinator after the adoption of this resolution is found to conflict with any previous policy promulgated by the WCRC Board, the administrative rule promulgated by the FOIA coordinator is controlling.

To the extent that any provision of these procedures and guidelines or any administrative rule promulgated by the FOIA coordinator pertaining to the release of public records is found to conflict with any state statute, the applicable statute shall control. The FOIA coordinator is authorized to modify these procedures and guidelines as necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with state law. The FOIA coordinator shall inform the WCRC Board of any change to these procedures and guidelines.

These FOIA policies and guidelines became effective November 2, 2021.