



Leelanau County FOIA Procedures and Guidelines - Public Summary

Preamble: Statement of Principles

It is the policy of Leelanau County that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The County's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent and fair manner regardless of who makes a request. The County acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request.

Sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals. Leelanau County will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records.

Section 1: General Policies

The FOIA Coordinator may implement administrative rules, consistent with State law and these FOIA Procedures and Guidelines, to administer the acceptance and processing of FOIA requests.

The County is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other County staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The County will make this document publicly available without charge on the County's website at <http://www.leelanau.gov> or individuals may arrange for a hard copy of this document by contacting the FOIA Coordinator.

The FOIA Coordinator shall keep a copy of all requests for public records and documents provided for a period of at least one year.

Section 2: Requesting a Public Record

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the County may be submitted on the County's FOIA Request Form or in any other form of writing. No specific form to submit a request is required, however, a request must sufficiently describe a public record so as to enable the County to find it. Include the words "FOIA" or "FOIA Request" in the request to assist the County in providing a prompt response.

Forms and other related information are available on the County's website or by contacting the FOIA Coordinator.

Methods to request records:

- **Email:** FOIA@leelanau.gov
- **Mail:** Leelanau County Prosecutor's Office, 8527 E. Government Center Dr., Suite 202, Suttons Bay, MI 49682, Attn: FOIA Coordinator
- **Fax:** 231-256-0133, with "FOIA" or "FOIA Request" on the first/cover page
- **In Person:** At the address above, during normal business hours

A person may request that public records be provided on DVD or emailed in lieu of paper copies. The County will comply with the request only if it possesses the necessary technological capability to provide records in the requested format.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the County will issue a response within 5 business days of receipt of a FOIA request. If received via fax or email, day one will commence on the first business day following receipt. The County will respond to a request/issue notice in one of the following ways or a combination thereof:

- Confirm receipt of request
- Provide requested public record
- Deny the request and state the reasons for exemption and appeal rights
- Advise the record does not exist under the name or description provided
- Indicate the County needs an additional 10 business days to respond for a total of 15 business days (only one such extension is permitted)
- Issue a notice indicating that the public record requested is available at no charge on the County's website.

Please note: The County is not required to provide the requested records within 5 days or within a particular timeframe, however, it will work with the requestor to provide the records in a timely manner based on the availability of public resources to provide such documents.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request.

On all denials, an explanation of the person's right to submit an appeal of the denial to either the County Board of Commissioners or seek judicial review in the Leelanau County Circuit Court, will be provided. An explanation of the right to receive attorneys' fees, costs, disbursements, compensatory and punitive damages, will also be provided.

Section 4: Fees, Calculation of

If deemed to be an unreasonably high cost, the Michigan FOIA statute permits the County to charge for labor and materials associated with processing a request including:

- Labor costs associated with searching for, locating and examining a requested public record, copying or duplication, transferring digital records to media, review of a record to separate and delete/redact information exempt from disclosure, and cost of computer discs and postage.

The following factors may be used to determine an unreasonably high cost:

- Volume of the public record requested
- Amount of time spent to search, review, and separate exempt from non-exempt information
- Whether the public records are from more than one County department
- The available staffing to respond to the request, including legal consultation
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request

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. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid County employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at an hourly wage not to exceed six times the state minimum hourly wage.

If a request for public records is from a person who has not paid the County in full from a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning the search for a record when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee
- The public records made available contained the information sought in the prior written request and remain in the County's possession
- The public records were made available to the individual, subject to payment, within the time frame estimated by the County to provide the records
- Ninety (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 the County
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit

If no response to notice of deposit or fees is received by the County with 45 days of request, the request will be deemed abandoned.

Section 5: Deposit

The FOIA Coordinator shall provide a detailed itemization of the estimated costs incurred to process the request. **If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not to exceed one-half of the total estimated fee before the request is processed.** Payment will be accepted in the form of cash, check, or money order payable to Leelanau County. Payments may be mailed to the Prosecutor's Office or dropped off.

Section 6: Waiver of Fees

The cost of obtaining a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The County Board of Commissioners may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

Section 7: Discounted Fees

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

- Indigent and receiving specific public assistance
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence
- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disability's assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of 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, 1974 PA 258, MCL 330.1931
 - Is accompanied by documentation of its designation by the state, if requested by the public body

An individual is not eligible to receive a waiver if the requestor has previously received discounted copies of public records from the County twice during the calendar year.

Section 8: Appeal of a Denial of a Public Record

If a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, an appeal of denial may be made to the County Board of Commissioners. 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.

The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Board of Commissioners meeting following submission of the written appeal. Within 10 business days of receiving the appeal the County Board of Commissioners will respond in writing by:

- Reversing the disclosure denial
- Upholding the disclosure denial
- Reverse the disclosure denial in part and uphold the disclosure denial in part
- Issue a notice extending for not more than 10 business days the period during which the County Board of Commissioners shall respond to the written appeal. The County Board of Commissioners shall not issue more than one notice of extension for a particular written appeal.

If the County Board of Commissioners fails to respond to a written appeal, or if the County Board of Commissioners upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the County Board, a civil action may be filed in Leelanau County Circuit Court within 180 days after the County's final determination to deny the request. If a court that determines a public record is not exempt from disclosure, it shall order the County to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or County prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the County has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the County 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 record as part of its public function.

Section 9: Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the County to process a FOIA request exceeds the amount permitted by state law or under this policy, an appeal may be made to the County Board of Commissioners by submitting a written appeal for a fee reduction to the office of the County Board of Commissioners. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

The County Board of Commissioners is not considered to have received a written appeal until the first regularly scheduled County Board of Commissioners meeting following submission of the written appeal. Within 10 business days after receiving the appeal, the County Board of Commissioners will respond in writing by:

- Waiving the fee
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the County Board of Commissioners will respond to the written appeal. The County Board of Commissioners shall not issue more than one notice of extension for a particular written appeal.

Where the County Board of Commissioners reduces or upholds the fee, the determination must include a certification from the County Board of Commissioners that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines.

Within 45 days after receiving notice of the County Board's determination of an appeal, the requesting person may commence a civil action in Leelanau County Circuit Court for a fee reduction.

If a civil action is commenced against the County for an excess fee, the County is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed in circuit court unless one of the following applies:

- The County does not provide for appeals of fees
- The County Board of Commissioners failed to respond to a written appeal as required
- The County Board of Commissioners issued a determination to a written appeal

If a court determines that the County required a fee that exceeds the amount permitted under its publicly available procedures and guidelines, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

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 attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the County has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the County 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.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these FOIA Procedures and Guidelines conflict with previous FOIA policies promulgated by County Board of Commissioners or the County Administration these FOIA Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the County Board of Commissioners or the County Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these FOIA Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the County Board of Commissioners or the County Administration, and to adopt such administrative rules as deemed 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 County Board of Commissioners of any change to these Policies and Guidelines.

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, if certification is available.

For more information related to Michigan FOIA laws (MCL 15.231), visit: <https://www.legislature.mi.gov>

Full Contact Information: Leelanau County Prosecutor's Office, Attn: FOIA Coordinator
8527 E. Government Center Drive, Suite 202
Suttons Bay, MI 49682
Phone: 231-256-9872, Fax: 231-256-0133, Email: FOIA@leelanau.gov

These FOIA Policies and Guidelines became effective July 1, 2015, revised in 2024.