

FOIA Policy For The Village Of Baldwin
8/10/17

Definitions

- “Act” the Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1975, as amended, MCLA §14.231 *et seq.*
- “FOIA Coordinator” an individual designated by the Village to accept and process requests for public records as outlined in this policy and the Michigan Freedom of Information Act.
- “Person” an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity.
NOTE: “Person” does not include an individual in a local, state, or federal correctional facility.
- “Public Body” the Village of Baldwin or a board, department, commission, council, or agency thereof.
- “Public Record” a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it is created. NOTE: “Public record” does not include computer software.
- “Village” the Village of Baldwin or a board, department, commission, council, or agency thereof.
- “Writing” any means of recording, including handwriting, typewriting, photographing, photocopying, and printing. “Writing” includes letters, pictures, sounds, maps, tapes, films, and any other means of recording or retaining meaningful content.
- “Written Request” a writing that asks for information. This includes a writing transmitted by FAX or e-mail.

Right to public records

Existing records: A person has the right to inspect, copy, or receive copies of any public record that is not exempt (see Appendix 1 for list of exempt records). A certified copy of a public record will be provided upon written request.

Future records: A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months at the request of the subscriber, and renewable thereafter.

Fees may be charged in accordance with the fee schedule set forth elsewhere in this policy.

What constitutes a request for a public record under this policy; to whom should the request be made

A person makes a request for a public record under this policy by submitting a *written request* to the *FOIA Coordinator*. [If the written request is delivered to any employee of the Village, that person shall promptly forward the request to the FOIA Coordinator.]

The written request must describe a public record sufficiently to enable the Village to identify the record requested.

Duties and responsibilities of the FOIA Coordinator

The FOIA Coordinator is responsible for accepting and processing requests for public records. The FOIA Coordinator shall keep a copy of all written requests for public records on file for at least 1 year.

The FOIA Coordinator is responsible for approving denials of requests and shall sign all written notices of denial.

The FOIA Coordinator may designate another individual to act on his/her behalf. This shall ensure full coverage of this position during periods of unavailability and vacation or other leave of the FOIA Coordinator.

Time of response

The Village must respond to the request within 5 business days after receiving the request.

NOTE: a request received by electronic means (e.g., e-mail or FAX) is not considered received until 1 business day after the transmission is made.

This 5-day time period can be waived by written agreement of the person making the request.

Types of responses allowed

All responses shall be in writing. Four types of responses are permitted by the act.

1. Notice of extension of time to respond. The Village may issue only 1 notice of extension of time to respond for a particular request. That notice may extend the period of response for up to 10 days from the end of the original response period. The notice must specify the reasons for the extension and the date by which the Village will grant or deny the request. A sample "Notice Of Extension Of Time To Respond" is attached in Appendix 2.

2. Grant request. If granting a request for inspection or copying of a public record, the Village shall provide reasonable facilities for making memoranda or abstracts from its public records during its normal business hours. Persons with special needs should contact the FOIA Coordinator to ensure that arrangements for special needs or reasonable facilities are prepared.

The Village shall protect public records from loss, unauthorized alteration, mutilation, or destruction, and may adopt reasonable rules necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions.

The Village is not required to make a compilation, summary, or report of information, nor create a new public record.

A sample notice granting the request for public records is attached in Appendix 2.

3. Grant request in part and provide written notice of denial in part. See subsection 4 below for the necessary contents of a written notice of denial in part. A sample notice granting in part and denying in part the request for public records is attached in Appendix 2.
4. Written notice of denial of request. A written notice denying a request, in whole or part, constitutes the Village's final determination from which review may be sought (See "Appeal Rights," below). The written notice of denial must contain:
 - a) an explanation of the basis for the determination that the public record (in whole or part) is exempt under the act or other statute, if that is the reason for denying all or a portion of the request;
 - b) a description of a public record or information on a public record that is separated or deleted as exempt under the act, if a separation or deletion is made;
 - c) a certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the Village, if that is the reason for denying all or a portion of the request;
 - d) a full explanation of the requesting person's right to do either of the following:
 - 1) submit a written appeal to the Village Council that includes the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial;
 - 2) seek judicial review by commencing, within 180 days of the denial or partial denial of the request, an action in the circuit court to compel the Village's disclosure of the public records.
 - e) notice that if an action for review is filed in circuit court and the court determines the Village did not properly respond to the request for public records and orders disclosure of all or a portion of a public record, the person requesting court review can recover attorneys' fees and damages.

A sample notice denying the request for public records is attached in Appendix 2.

No response

A failure to respond constitutes the Village's final determination to deny the request. On review, the circuit court may assess damages against the Village for wrongfully denied requests. (See "Appeal to Circuit Court," below.) Therefore, it is imperative that a proper response, as indicated above, is provided.

Appeal Rights

Either a written denial of all or a portion of a public record or the failure of the Village to respond in the manner delineated above constitute a final determination. After either event, the person requesting the public record may do either of the following:

- a) appeal the denial to the Village Council, or
- b) commence an action in circuit court.

Appeal to the Village Council

An appeal to the Village Council must be made *in writing* and contain the word "*appeal*." The writing must identify the reason or reasons why the final determination should be reversed.

Within 10 days* after receiving a written appeal, the Village Council must do 1 of the following:

- a) reverse the final determination and grant the request;
- b) issue a written notice to the requesting party upholding the final determination;
- c) reverse the final determination in part and issue a written notice to the requesting person upholding the final determination in part;
- d) issue a notice that an extension of time within which to respond is needed, providing the new date by which a response will be given. One extension beyond the 10-day period is allowed, but only under unusual circumstances. Unusual circumstances mean the need to search for, collect, or appropriately examine or review a *voluminous amount* of separate and distinct public records pursuant to a single request, and/or the need to collect the requested public records from *numerous field offices, facilities, or other establishments* that are located apart from the processing office.

*The time periods within which the Village Council must act on an appeal do not begin to run until the first regularly scheduled Village Council meeting following receipt of the written appeal.

If the Village Council fails to act within the time periods given above or acts within the time periods but upholds all or a portion of the final determination subject to the written appeal, the requesting person may seek judicial review by commencing an action in circuit court.

Schedule of fees, deposits, fee waivers

Copying costs:

8 ½ x 11 paper--\$0.10 per for a single-sided copy, \$0.20 per paper for a double-sided copy
8 ½ x 14 paper--\$0.25 per for a single-sided copy, \$0.35 per paper for a double-sided copy
Oversize paper and other forms of media (video tapes, floppy disks, CDs magnetic tapes, etc.)—the actual cost of materials

If copying must be performed using outside vendor equipment, the actual invoice cost from the vendor should be charged.

Labor costs:

The hourly wage of the lowest paid employee capable of retrieving the information necessary to comply with the request. "Retrieval" includes the search, examination, review, and the deletion and separation of exempt from nonexempt information. However, no labor costs will be charged unless failure to charge a fee would result in unreasonably high costs to the Village because of the nature of the request in the particular instance, and the Village specifically identifies the nature of these unreasonably high costs.

Mailing costs:

Actual mailing costs of the requested items.

Deposits:

If it appears that fees for a response to the request for a public record will exceed \$50.00, the Village will require a deposit of 50% of the projected cost from the person making the request for public record.

Free or reduced fees for low-income individuals

A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request to an individual who submits an affidavit stating that he or she is receiving a form of public assistance or otherwise states facts showing the inability to pay the costs because of indigency.

Materials exempt from disclosure, separation of non-exempt material

Appendix 1 lists the materials that are not subject to disclosure to the public upon a request for public records. If a public record contains material that is exempt from disclosure and also material that is not exempt from disclosure, the FOIA Coordinator shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying. The FOIA Coordinator is directed to generally describe the exempt material unless doing so would reveal the contents of the exempt information and thus defeat the purpose of the exemption.