

SOUTHWEST MICHIGAN BUILDING AUTHORITY  
KALAMAZOO COUNTY MICHIGAN

# FREEDOM OF INFORMATION ACT

Policy and Procedure Guide

Adopted by: Southwest Michigan Building Authority Board

March 25, 2021

SOUTHWEST MICHIGAN BUILDING AUTHORITY

SUMMARY OF SOUTHWEST MICHIGAN BUILDING AUTHORITY FREEDOM OF  
INFORMATION ACT POLICY & PROCEDURE GUIDE

- **Purpose of Policy:** To assure compliance with the Michigan Freedom of Information Act.
  
- **Who to contact with FOIA requests:** Southwest Michigan Building Authority  
Legal Counsel  
James W. Porter  
7275 West Main Street, Kalamazoo, MI 49009  
(269) 375-7195  
jposhtwp@oshtemo.org
  
- **How to submit a Request:** Submit a written request using a Freedom of Information Request Form to: describe the documents you are requesting, check the nature of the request being made, indicate payment type, sign and submit the form to the FOIA Coordinator listed above.
  
- **Response required:** The FOIA Coordinator must respond to the request within five (5) business days following receipt of the written request to: grant, deny, grant in part, or deny in part.  
The FOIA Coordinator may: request an one-time extension of up to ten (10) business days, or request a deposit (if the entire fee estimate of producing the requested documents exceeds \$50.00).
  
- **Option if denied:** You have the right to appeal any denial (Please see, “Notice of Right to Appeal” in this Policy & Procedure Guide).

**Notice:** Not all records are public records within the meaning of the Michigan Freedom of Information Act (Public Act 442 of 1976; MCL 15.243(1)). Please see the attached “Exemption” page for information about exempt records.

*The Michigan Freedom of Information Act (FOIA)* requires that Public Bodies grant full and complete access to information regarding the affairs of their operations. This Act (Public Act 442 of 1976; MCL 15.231) provides for public access to certain records; permits certain fees, prescribes the power and duties of certain public officers; and provides remedies, penalties, and repeals to certain acts and parts of acts.

The Freedom of Information Act is designated to implement a strong State policy that all records maintained by the government, unless exempted, are to be made available to the public upon request.

As a “Public Body” within the meaning of the Act (PA 442 of 1976, MCL 15.232(d)(iii)), the Southwest Michigan Building Authority is required to assure that all persons (except those incarcerated in State or local correctional facilities) are entitled to full and complete information if the procedures of the Act are followed. Information covered under the FOIA includes business transactions, and paperwork maintained, received, and generated as part of the governmental unit.

The purpose of this policy is to:

- Assure compliance with the Freedom of Information Act by all Southwest Michigan Building Authority personnel, as required and permitted by statute.
- Formulate a comprehensive policy that will be applicable to the Southwest Michigan Building Authority regarding the dissemination of information pursuant to the Freedom of Information Act (PA 442 of 1976; MCL 15.231 et. seq.), as amended.
- Communicate to the Southwest Michigan Building Authority officials, department heads, employees, and the public the formal Southwest Michigan Building Authority Policy on Freedom of Information Act requests.

# **FREEDOM OF INFORMATION ACT PROCEDURE**

## **I. RECEIVE THE REQUEST**

1. FOIA Coordinator - The Southwest Michigan Building Authority Office Manager, or his/her designated FOIA Officer, with authorization of the Southwest Michigan Building Authority Board to accept and process requests for public records and to approve denials under the Act.
2. The FOIA Coordinator shall be notified of all requests for processing. The FOIA Coordinator, or his/her designee, shall prepare a memo to the Southwest Michigan Building Authority appropriate personnel: requesting the documents, stating the time frame for replying to the request, and requesting a statement of the time required to compile the request. Requests for departmental information that is furnished to the general public through normal business operations should not be treated as a FOIA request. This includes information readily available on the Southwest Michigan Building Authority website, pamphlets, loose-leaf publications, and other printed materials (e.g. reports) produced for public information and disclosure. In addition, manuals and forms adopted or used by the Southwest Michigan Building Authority in the discharge of its function should also be made available without a FOIA request.
3. All denials under this Act must be authorized by the FOIA Coordinator and must cite the reason for denial (i.e. the record is exempt under MCL 15.243 (Sec. 13) or another statute; the record does not exist (with a certificate to that effect), or the record has been separated or deleted pursuant to MCL 15.244 (Sec. 14). Denials must include a full explanation of the requestor's right to appeal the request to the head of the Southwest Michigan Building Authority, or seek judicial review of the denial.
4. Requests under the Freedom of Information Act must meet the following requirements:
  - a. Must be submitted in writing. (If you require assistance with writing or translating, please contact the FOIA coordinator). To facilitate an expedient response, we request that you utilize the request form attached to this document. However, pursuant to MCL 15.233(1), individuals can also submit their requests in letter format. This policy document and request form are also available on the Southwest Michigan Building Authority website at [www.swmiba.org](http://www.swmiba.org). Requests received by facsimile, electronic mail, or other electronic means are considered received the first business day following the transmittal.
  - b. Must be identifiable. The written request should describe the public record sufficiently to enable the FOIA Coordinator to find the record.
  - c. Must exist. The requested document or information must exist within the Southwest Michigan Building Authority.

- d. Must not be exempt from disclosure under the Act (MCL 15.243 (Sec. 13)). See attachment for a list of exempt records.
- e. Must specify a one-time (single request) or a renewable (subscription request-information disseminated on a regular basis for up to six (6) months) request.
- f. Must not be received from a prisoner in a State, County, or Federal correctional facility.

All requests received from attorneys will be forwarded to the Corporate Counsel for information, and, if deemed necessary, for action.

## **II. RESPOND TO THE REQUEST**

1. The FOIA Coordinator shall **determine the scope of the request** (e.g. the time required to search for, examine, separate or delete exempt information, and/or copy the requested records).
2. The FOIA Coordinator may charge fees for reproducing requested records (in accordance with MCL 15.234).
  - a. The FOIA Coordinator should use the established FOIA fees as outlined in the attached fee schedule to **estimate the cost of providing the requested information**.
  - b. The first \$20 of a fee shall be waived for a person who receives public assistance, or presents facts showing an inability to pay because of indigence.
  - c. The FOIA Coordinator shall periodically review and recommend a FOIA fee adjustment to the Southwest Michigan Building Authority Board. Approved fees shall be communicated to all Southwest Michigan Building Authority personnel.
3. In accordance with the Act (MCL 15.235(2) emphasis added), “[u]nless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record **within 5 business days after the public body receives the request** by doing 1 of the following”
  - a. Process and grant the request.
  - b. Issue a written notice to the requestor to deny the request.
  - c. Grant the request in part, and issue a written notice to the requestor to deny the request in part (pursuant to the reasons provided for denial of the request in the Act).

- d. Under “unusual circumstances” (as defined in MCL 15.232(g)) issue a one-time notice to extend the time to respond by ten (10) business days.
- e. If the cost of the request is expected to exceed \$50, issue a notice to the requestor requiring a 50% good-faith deposit prior to processing the request.

### **III. RECORD THE REQUEST**

1. The FOIA Coordinator, or his/her designee, who processes the FOIA information shall establish and maintain a FOIA file to track and record related details to verify the following:
  - a. Compliance with MCL 15.233(2): “A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.”
  - b. Compliance with MCL 15.234: Establish publicly available procedures and guidelines, which detail how an individual may request documents from the public body, and the fees associated with the fulfillment of requests under the Act, and the manner in which those fees are calculated.
  - c. Compliance with MCL 15.235(2): A public body shall respond to a request for information under the Act within five (5) business days after receiving the request as specified under the Act.
2. The records of requests maintained by the FOIA Coordinator should maintain the written requests, and responses identifying (at minimum) the following:
  - a. Date received;
  - b. Brief description of the request;
  - c. The identity of the requesting party;
  - d. The date of response;
  - e. The response type (granted, denied, partial, extension, deposit requested);
  - f. Fees charged;
  - g. Fees collected
3. In addition to the file, the FOIA Coordinator shall keep on file a time-stamped copy of all requests and responses for a period of one (1) year following their issuance.
4. FOIA files, requests, responses, and related information must be available for a review by upon request.

# FREEDOM OF INFORMATION ACT REQUEST FORM\*

TO: SOUTHWEST MICHIGAN BUILDING AUTHORITY

REQUESTED BY: \_\_\_\_\_  
(Name) \*\*  
\_\_\_\_\_  
(Address) \*\*  
\_\_\_\_\_  
(Telephone) \*\*  
\_\_\_\_\_  
(Email)

DESCRIPTION OF PUBLIC RECORDS REQUESTED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NATURE OF REQUEST** (*check one below*):

- \_\_\_\_\_ Please provide a copy of the requested public records.  Paper Records  Digital Records
- \_\_\_\_\_ Please provide a certified copy of the requested public records.
- \_\_\_\_\_ Please allow me an opportunity to inspect the requested public records prior to copying. I understand that the Southwest Michigan Building Authority may require me to schedule an appointment for this inspection.

**PAYMENT** (*check one below*):

- \_\_\_\_\_ I understand that the Southwest Michigan Building Authority will charge me a fee for providing a copy of public records, including the cost of copying, mailing, searching, examining, reviewing, and separating or deleting exempt information. I understand that a deposit of one-half of the anticipated fee (if the fee is estimated to exceed \$50.00) will be required.
  - \_\_\_\_\_ Attached is an Affidavit of Indigency. Please furnish me with the requested public records without charge for the first \$20.00 of the required fee. I agree that the Southwest Michigan Building Authority may respond to my request by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- I acknowledge that this request will be processed in compliance with the Southwest Michigan Building Authority Freedom of Information Act Policy and Procedure Guide (a copy of which is also available online at [www.swmiba.org/applications-forms](http://www.swmiba.org/applications-forms)).

\_\_\_\_\_  
(Date) (Signature)

\* It is the policy of the Southwest Michigan Building Authority that a written Freedom of Information Act Request is required except when the request involves the following types of records: (1) receipts for payment, (2) the applicant's own permit, (3) Certificates of Occupancy, or (4) invoices for extra inspections.

**\*\* REQUIRED**

# SOUTHWEST MICHIGAN BUILDING AUTHORITY

## FREEDOM OF INFORMATION ACT REVISED FEE SCHEDULE

Effective: March 25, 2021

<b><u>Type of Reproduction</u></b>	<b><u>Cost</u></b>	<b><u>Unit</u></b>
Digital Media (Flash Drive):	\$10.00	per 16GB drive
Copies of a Document:		
8½ x 11	\$0.10	per page
8½ x 14		
Larger copies: 18 x 24	\$8.00	per page
24 x 36		
36 x 48		
Hourly wage of the lowest paid departmental employee capable of retrieving the information necessary to comply with the request plus 50% for fringe benefits.	Actual	per ¼ hour
Postage / Shipping:	Actual	per mailing

### **Waivers**

The first \$20 of the fee shall be waived for each request of an individual who submits an Affidavit of Indigency stating that they are receiving public assistance or facts showing inability to pay the full cost.

A waiver of fees will **not** be provided to an indigent person requesting additional copies of identical documents previously provided with a waiver of fees pursuant to a prior request under the FOIA.

### **Deposits**

If the fee for the search and providing the public information exceeds \$50, a deposit of ½ the estimated fee is required.

### **Other**

Fees must be paid in full prior to the actual delivery of the public information or copies.

The Authority cannot refuse to process a subsequent FOIA request on the ground that the requestor failed to pay fees charged for a prior FOIA request.

# FREEDOM OF INFORMATION ACT

## Notice of Right to Appeal

After notification of a denial of a Freedom of Information Act request, the requesting party has to the right to undertake either of the following actions to appeal the decision:

1. Submit to the Building Official of the Southwest Michigan Building Authority a written appeal that specifically states the word “appeal” and identifies the reason(s) for the reversal of the disclosure denial to:

Southwest Michigan Building Authority  
Attn: Board Chairperson  
7275 West Main Street  
Kalamazoo, MI 49009

The Board Chairperson is not considered to have received the written appeal until the first regularly scheduled Board meeting following the submission of the appeal (a list of regular meeting dates is available online at [www.swmiba.org/board-information](http://www.swmiba.org/board-information)).

The Board Chairperson shall, within ten (10) business days after receiving the written appeal, do one of the following:

- a. Reverse the denial;
  - b. Issue a written notice upholding the denial;
  - c. Reverse the denial in part, and issue a written notice upholding the denial in part;
  - d. Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period for which the Building Official shall respond to the written appeal.
2. Seek judicial review under MCL 15.240(1)(b).

The requesting party also has the right to receive attorney’s fees and damages as provided in MCL 15.240(6), if, after judicial review, the Circuit Court determines that the public body has not complied with the Act, and orders disclosure of the public record.

## **MCL 15.243- EXEMPTIONS FROM DISCLOSURE**

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A public record or information 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 giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(g) Information or records subject to the attorney-client privilege.

(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.

(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 the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under 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.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

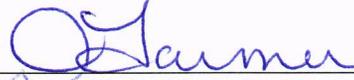
(w) Information or records that would disclose the social security number of an individual.

(y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

A motion was made by Jeff Sorensen and supported by Dusty Farmer to approve the revised policy as presented.

Opposed: None

The Chair declared that the motion was carried 4-0, with 1 absent.



\_\_\_\_\_  
DUSTY FARMER, Chair  
Southwest Michigan Building Authority

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CERTIFICATE

I hereby certify that the foregoing constitutes a true and complete copy of an excerpt of minutes of a meeting of the Southwest Michigan Building Authority Board, held on March 25, 2021, at which meeting 4 members were present and voted upon the same as indicated in said Minutes; that said meeting was held in accordance with the Open Meetings Act of the State of Michigan.



\_\_\_\_\_  
KYLE GIBSON, Board Secretary