

**COMMUNITY MENTAL HEALTH AUTHORITY
CLINTON-EATON-INGHAM COUNTIES**

PROCEDURE #: 2.1.17	SUBJECT: Freedom of Information Act
Related Policy(ies) #: 2.1.17	SUBJECT: Freedom of Information Act
Issued by (Title):	Original Effective Date: 9/8/03

REVISED

12/14/2015

Review Dates:

07/29/04					
4/21/08					
7/26/10					

I. PURPOSE

To ensure uniformity of practice and procedures in releasing public records and charging of fees by which Community Mental Health Authority of Clinton, Eaton and Ingham counties (CMHA-CEI) will review and respond to Freedom of Information Act (FOIA) requests in compliance with Michigan's Freedom of Information Act (FOIA), Public Act 442 of 1976.

II. APPLICATION

All written requests for public records that are made pursuant to FOIA.

III. DEFINITIONS:

- A. *FOIA Coordinator:* An individual designated by the Chief Executive Officer (CEO) to accept and process requests for public records. The CEO designates the Senior Human Resources Specialist to act as the FOIA Coordinator.
- B. *Person:* 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.
- C. *Public body:* A public body shall include CMHA-CEI.
- D. *Unusual circumstances:* Any one or a combination of the following, but only to the extent necessary for the proper processing of a request:
 - 1. 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.
 - 2. The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.
- E. *Verbal Request:* A verbal request for information is for information that CMHA-CEI believes is available on CMHA-CEI's public website, the FOIA Coordinator shall, where practicable and to the best of the FOIA Coordinator's knowledge, inform the requestor about CMHA-CEI's pertinent website address.

- F. *Writing*: 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, drums, or other means of recording or retaining meaningful content.
- G. *Written request*: A writing that asks for information, and includes a written request transmitted by facsimile, electronic mail, or other electronic means.

IV. PROCEDURE

A. Receipt of FOIA Request-

1. A "FOIA Request" is a request for public records made in writing with enough specificity to enable the FOIA Coordinator to locate the records. It may, or may not; specifically state that such request is being made pursuant to FOIA. Requests shall not be accepted from individuals serving a sentence of imprisonment in a state, county, or federal correctional facility.
2. The FOIA Coordinator is the designated recipient for all FOIA Requests. **Any employee, officer, or board member of CMHA-CEI that receives a FOIA Request shall immediately forward such request to the FOIA Coordinator.** Persons questioning how FOIA Request may be initiated shall be directed to CMHA-CEI's FOIA website (accessible by going to <http://www.ceicmh.org> click on "About Us", click on Freedom of Information Act ("FOIA")), and further advised to submit such requests in writing to the attention of the FOIA Coordinator.

Requests may be submitted by mail to:

Community Mental Health Authority – CEI
Attn: Human Resources – FOIA Coordinator
812 E. Jolly Road
Lansing, Michigan 48910

Via email at FOIACoordinator@ceicmh.org, or via facsimile at (517) 346-8116.

3. A FOIA Request received via electronic transmission is not considered to have been received until one (1) business day after the electronic transmission is made, or if the FOIA Request is sent by electronic mail and delivered to a spam or junk-mail folder, the request is not received until one (1) day after CMHA-CEI first becomes aware of the written request.
4. Upon receipt of a FOIA Request, the FOIA Coordinator shall immediately stamp the FOIA Request with the date the request was received, review the request to determine if it complies with the statute, and begin to process the request.

B. Procedure for Response –

1. The FOIA Coordinator or designee shall review the request and collaborate with other CMHA-CEI departments, as necessary, to determine if there is a public record for the information requested in existence and available to CMHA-CEI.
2. An initial response to the FOIA Request will be sent within (5) five business days of the date it was received by CMHA-CEI (not the date upon which it was received by the FOIA Coordinator). A request received by electronic mail shall be considered to have been received on the next business day following its transmission, or as provided for in FOIA.

3. CMHA-CEI's initial response may grant the FOIA Request:
 - a. in full,
 - b. grant it in part and deny it in part,
 - c. deny the FOIA Request entirely (in compliance with FOIA requirements), or
 - d. seek a one-time extension of up to ten (10) business days to respond to the FOIA Request. The response must at a minimum comply with the requirements in MCL 15.235. The follow-up response to a time-extension notification may grant the FOIA Request in full, grant it in part and deny it in part, deny the FOIA Request entirely (in compliance with FOIA requirements). No additional time extensions may be permitted.
4. If the requestor specifies in their request a preference to receive the response in electronic format (e.g., .pdf), and in the sole discretion of the FOIA Coordinator, it is determined that producing the response in the requested format is feasible, reasonable, and cost effective, the response may be provided to the requestor electronically.
5. Every response denying, in whole or in part, a FOIA Request shall include information regarding the requestor's rights to appeal CMHA-CEI's decision. CMHA-CEI's appeal process will comply with the requirements set forth in MCL 15.240.
6. CMHA-CEI shall keep and maintain a time stamped copy of each FOIA Request, CMHA-CEI's subsequent response(s), and any accompanying documents for a minimum of (1) one year from the date the FOIA Request was received and the response(s) issued.
7. Alternatively, at the discretion of the requestor, CMHA-CEI shall make available an opportunity for the requestor to make an inspection and examination of the identified public records at CMHA-CEI's offices, during regular business hours.
8. The Act does not require CMHA-CEI to create a new public record and to the extent required by the Act for the furnishing of copies, or edited copies pursuant to section 14(1) of the FOIA, of an already existing public record.
9. If CMHA-CEI does not have the document requested, CMHA-CEI shall treat the response as a denial.

C. Denials and Appeals –

1. Any denials of a FOIA Request shall be made in compliance with MCL 15.243. Each denial shall reference the reason for the denial and the applicable FOIA section, as well as any additional information which could clarify the reason for denial, to the extent that such clarifying information may be produced.
2. Information and records concerning treatment and services rendered to individuals in CMHA-CEI's possession are not public records, and are specifically exempt from disclosure under the Health Insurance Portability and Accountability ACT (HIPAA), the Michigan Mental Health Code (MCL 330.1001 *et seq.*), the Michigan Public Health Code (MCL 333.1101 *et seq.*), the federal regulations covering the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Part 2), and other applicable laws concerning the confidentiality of an individual's health and personal information.

3. After receiving CMHA-CEI's final response denying all or a portion of a FOIA Request, a requestor may, at his or her discretion:
 - a. Make a written appeal (containing the work "appeal") to CMHA-CEI's CEO or
 - b. Commence a civil action in Ingham County Circuit Court within one hundred eighty (180) days of the requestor's receipt of CMHA-CEI's final determination.
4. In the event CMHA-CEI's CEO receives an appeal of a FOIA denial, he or she shall within ten (10) business days provide a written response to the requestor either:
 - a. reversing the disclosure denial,
 - b. upholding the disclosure denial,
 - c. reversing the denial in part and upholding it in part, or
 - d. issue a one-time notice extending the response period for up to ten (10) business days.
5. Requestors may also appeal the imposition of fee by CMHA-CEI to the extent that such fee exceeds the amount permitted under this Procedure. Such appeal may be made to the CEO, in the same manner as denial appeals described above, or may be made to the Ingham County Circuit Court within forty-five (45) days of the receipt of the final determination (or CEO's determination upon appeal).
6. Pursuant to an appeal of excessive fees, the CEO shall within ten (10) business days provide a written response to the requestor either:
 - a. waiving the contested fee,
 - b. reducing the fee,
 - c. upholding the fee, or
 - d. issuing a one-time notice extending the response period for up to ten (10) business days.

D. Reimbursement of Cost –

1. CMHA-CEI may charge the requestor fees as reimbursements for costs incurred pursuant to a granted (or partially granted) FOIA Request, in compliance with FOIA. CMHA-CEI may recover costs only on the six (6) following categories of expenditures:
 - a. Labor associated with searching for, locating, and examining of public records.
 - b. Labor associated with necessary review and/or redaction of exempt information from, public records to be produced.
 - c. Labor associated with the duplication or publication, including the making of paper copies, to be given to a requestor.
 - d. Non-paper physical media for electronic media storage.
 - e. Actual incremental costs of necessary duplication of paper records.
 - f. Actual costs of mailing, if any.

2. CMHA-CEI fees for the above cost-reimbursed services shall be as indicated in the Fee Itemization Schedule attached hereto as Exhibit A. Any fee that is charged shall be in compliance with MCL 15.234.
3. Labor Cost.
 - a. Labor cost shall be calculated and charged in increments of 15 minutes or more, with partial time increments rounded down. Rates for labor costs shall be at the lowest –paid employee rate for a CMHA-CEI employee capable of performing the applicable task.
 - b. Cost for labor associated with necessary review and/or redaction of exempt information, such costs shall not exceed an amount equal to six (6) times the state minimum hourly wage rate determined by the Workforce Opportunity Wage Act (MCL 408.411 et seq.). Refer to Exhibit A for current hourly or 15 minute increment of time rates.
 - c. The labor fee shall include 50% of the applicable labor charge amount, to cover or partially cover the cost of employee fringe benefits. In no event shall CMHA-CEI shall not charge more than the actual cost of fringe benefits.
 - d. Overtime wages shall not be included in the calculation of labor costs unless specifically agreed to by the requestor, in writing.
4. The fee for duplication of paper records shall not exceed \$0.25 per 8 ½ x 11 sheet of paper. CMHA-CEI shall utilize the most economical means available for making copies available.
5. In the event CMHA-CEI determines through a good-faith estimate that the fees to process the FOIA Request will be more than \$50.00, the requestor may be required to pay a good faith deposit of up to one-half (1/2) of the anticipated costs before CMHA-CEI begins processing the FOIA Request or provides the public records.
6. CMHA-CEI may, in its sole discretion, waive or reduce of the fee if CMHA-CEI determines that searching and/or furnishing public record copies is in the public's interest.
7. Public records shall be furnished without charge for the first \$20.00 of the fee for each in the following situations:
 - a. An individual who submits an affidavit stating facts showing inability to pay the cost because of indigence and/or that the individual is receiving public assistance. An Affidavit of Indigence for is attached hereto as Exhibit B. An individual may not invoke this discount if the individual has previously received discounted copies of public records from CMHA-CEI twice during the preceding calendar year, or if the individual is requesting the information in conjunction with outside parties who are providing payment to the individual to make the request. If a requestor is ineligible for the discount, CMHA-CEI shall inform the requestor specifically of the reason for ineligibility. If the requestor is eligible, CMHA-CEI shall fully not the discount on the detailed itemization.
 - b. A non-profit organization formally designated by the state to advocate the rights of persons with developmental disabilities and/or mental illness, pursuant the Mental Health Code (MCL 330.1931).

8. No fees shall be charged for any information that is available to the public on CMHA-CEI's website.
9. In the event that CMHA-CEI fails to respond to a FOIA Request within the statutorily allotted five (5) business days, CMHA-CEI shall reduce its charges for labor in the amount of five percent (5%) per day of delayed response, up to a maximum of fifty percent (50%) reduction.

V. MONITORING AND REVIEW.

This procedure shall be reviewed annually by the Director of Human Resources. Compliance with this procedure shall be monitored through internal quality improvement reviews and committees, and external reviews by accrediting organizations.

VI. REFERENCES.

- A. Michigan Freedom of Information Act, MCL 15.231, *et seq*, Act 442 of the Public Acts of 1976, as revised.
- B. Michigan Mental Health Code, (MCL 330, 1001 *et seq*, PA 258 of 1974), as revised
- C. Michigan Public Health Code (MCL 333.1101 *et seq*.)
- D. Health Insurance Portability and Accountability Act (HIPAA) of 1996
- E. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Part 2)

EXHIBIT A
FOIA Fee Itemization Schedule

Community Mental Health Authority of Clinton, Eaton and Ingham Counties

Component	Cost Calculations	Total
Labor Cost – Search, Location and Examination	Hourly wage of lowest paid capable employee <u>\$21.02</u> <u>\$21.02</u> multiplied by the 50% fringe benefit multiplier = <u>\$10.51</u> <u>\$21.02</u> + <u>\$10.51</u> = <u>\$31.53</u> hourly cost of lowest paid capable employee, divided by 4 (to obtain costs per 15 minute increment) = <u>\$7.88 (A)</u> Number of 15 minute time increments (“Units”) _____ (B) _____ (A) x _____ (B) =	\$ _____
Labor Cost - Redaction	Hourly wage of lowest paid capable employee <u>\$29.66</u> <u>\$29.66</u> multiplied by the 50% fringe benefit multiplier = <u>\$14.83</u> <u>\$29.66</u> + <u>\$14.83</u> = <u>\$44.49</u> hourly cost of lowest paid capable employee, divided by 4 (to obtain costs per 15 minute increment) = <u>\$11.12 (C)</u> Number of 15 minute time increments (“Units”) _____ (D) _____ (C) x _____ (D) =	\$ _____
Labor Cost – Duplication and Copying	Hourly wage of lowest paid capable employee <u>\$19.49</u> <u>\$19.49</u> multiplied by the 50% fringe benefit multiplier = <u>\$9.74</u> <u>\$19.49</u> + <u>\$9.74</u> = <u>\$29.23</u> hourly cost of lowest paid capable employee, divided by 4 (to obtain costs per 15 minute increment) = <u>\$7.30 (E)</u> Number of 15 minute time increments (“Units”) _____ (F) _____ (E) x _____ (F) =	\$ _____
Non-Paper Physical Media	Actual and most reasonable economical cost of: Flash Drives <u>\$5.00</u> x Number used _____ = \$ _____ (G) Compact Disc <u>\$0.19</u> x Number used _____ = \$ _____ (H) _____ (G) x _____ (H) =	\$ _____

EXHIBIT A
FOIA Fee Itemization Schedule
Community Mental Health Authority of Clinton, Eaton and Ingham Counties

Component	Cost Calculations	Total
Paper Media	Paper (8 ½ x 11) \$0.25 x Sheets used _____ =	\$ _____
Mailing	Cost of least expensive postal deliver confirmation \$ _____ (I) Incremental cost of expedited/insured shipping* \$ _____ (J) _____ (I) x _____ (J) = *Only upon stipulation of requestor	\$ _____
Subtotal (K):		\$ _____
Reductions for Delayed Response	Days of late FOIA Request Response _____ x 5% = _____% (L) Subtotal _____ (K) x _____ (J) =	- \$ _____
Statutory Fee Waiver	Subtract indigence fee waiver (\$20.00), if applicable.	- \$ _____
Voluntary Waiver	Subtract amount waived pursuant to CMHA-CEI determination that production is in the public interest, if applicable.	- \$ _____
Deposit	Subtract any amount previously provided by requestor as a deposit, if applicable.	- \$ _____
Total Due:		\$ _____

EXHIBIT B
FOIA Affidavit of Indigence Form
Community Mental Health Authority of Clinton, Eaton and Ingham Counties

Community Mental Health Authority – CEI (CMHA-CEI) is permitted to charge for its costs in retrieving and duplicating documents requested pursuant to the Michigan Freedom of Information Act (FOIA).

Pursuant to Section 4 of FOIA, this affidavit is submitted in support of a request that CMHA-CEI waive the fee.

I, _____, do affirm or swear under penalty of perjury that, (Check one):

- ___ 1. I am receiving public assistance, or
- ___ 2. I am unable to pay the cost for the following reasons:

Print Name

Signature

Date:

Signature of requestor was signed and sworn to before me in _____ County, Michigan, on _____.

Notary's Signature _____ Notary's Stamp _____.
(Notary's name, county, acting in county, and date commission expires)