Tuscola County Drain Commissioner
FOIA Procedures and Guidelines

Introduction

It is the policy of Tuscola County Drain Commissioner (the "Drain Commissioner") 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 may fully participate in the democratic process.

The Drain Commissioner'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, fair, and even-handed manner regardless of who makes such a request.

The Drain Commissioner acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to an FOIA request. The Drain Commissioner acknowledges that sometimes it is necessary to invoke the exemptions identified under the FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The Drain Commissioner will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Drain Commissioner's policy is to disclose public records consistent with and in compliance with state law.

The Drain Commissioner has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the Drain Commissioner and explaining how to understand a Drain Commissioner's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

Section 1 - General Policies

The Drain Commissioner, acting pursuant to the authority at MCL 15.236, designates DARA HOOD as the FOIA Coordinator for all Drain Commissioner records. The FOIA Coordinator is authorized to designate other Drain Commissioner staff to act on his or her behalf to accept and process written requests for the Drain Commissioner's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a Drain Commissioner 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 Drain Commissioner spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with appropriate Drain Commissioner staff to develop administrative rules for handling spam and junk-mail so as to protect Drain Commissioner systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules consistent with state law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The Drain Commissioner 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 Drain Commissioner staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the Drain Commissioner on file for a period of at least one year.

The Drain Commissioner will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. If it does not, the Drain Commissioner cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance.

A copy of this Procedures and Guidelines document and the Drain Commissioner's Written Public Summary must be publicly available by providing free copies both in the Drain Commissioner's response to a written request and upon request by visitors at the Drain Commissioner's office.

Section 2 - Requesting a Public Record

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available an FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Drain Commissioner may be submitted in any other form of writing (letter, fax, email, etc.).

A request must sufficiently describe a public record so as to enable Drain Commissioner personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail to the Drain Commissioner office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The Drain Commissioner 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 subscribe to future issues of public records that are created, issued, or disseminated by the Drain Commissioner on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

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. The FOIA Coordinator will deny all such requests.

Section 3 - Processing a Request

Unless otherwise agreed to in writing by the person making the request, the Drain Commissioner will issue a response within 5 business days of receipt of an FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The Drain Commissioner will respond to a 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; or
- Issue a notice indicating that due to the nature of the request the Drain Commissioner needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted; or

(a) **When a request is granted:** If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records.

If the cost of processing an FOIA request is $50.00 or less, the requester will be notified of the amount due and where the documents can be obtained.

If the cost of processing an FOIA request is expected to exceed $50.00 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the Drain Commissioner will require a good-faith deposit pursuant to Section 4 of these Procedures and Guidelines before processing the request.

In making the request for a good-faith deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the Drain Commissioner to process the request and also provide a best-efforts estimate of a time-frame it will take the Drain Commissioner to provide the records to the requestor. The best-efforts estimate shall be nonbinding on the Drain Commissioner, but will be made in good faith and will strive to be reasonably accurate, given

the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

(b) **When a request is denied or denied in part:** If the request is denied or denied in part, the FOIA Coordinator will sign and issue a Notice of Denial which shall provide, as applicable:

- 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 the Drain Commissioner;
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record;
- An explanation of the person's right to submit an appeal of the denial to either the office of the Drain Commissioner or seek judicial review in the Tuscola County Circuit Court; or
- An explanation of the right to receive attorneys' fees, costs, and disbursements, as well as actual or compensatory damages, and punitive damages of $1,000.00, should the requestor prevail in Circuit Court.

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 subject to the timelines described in this Section.

(c) **Requests to inspect public records:** The Drain Commissioner shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect Drain Commissioner records from loss, alteration, mutilation, or destruction and to prevent excessive interference with normal Drain Commissioner operations.

(d) **Requests for certified copies:** 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.

Section 4 - Fee Deposits

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 exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the Drain Commissioner in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person 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 Drain Commissioner's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Drain Commissioner 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 Drain Commissioner; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the Drain Commissioner;
- The Drain Commissioner is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the Drain Commissioner.

Section 5 - Calculation of Fees

A fee may be charged for the labor cost of copying/duplication.

A fee will ***not*** be charged for the labor 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 the Drain Commissioner because of the nature of the request in the particular instance, and the Drain Commissioner specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services compared to the costs of the Drain Commissioner's usual FOIA requests, not compared to the Drain Commissioner's operating budget.

The following factors shall be used to determine an unreasonably high cost to the Drain Commissioner:

- 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.
- Whether the public records are from more than one Drain Commissioner department or whether various Drain Commissioner offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan FOIA permits the Drain Commissioner to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating, and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Drain Commissioner.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Drain Commissioner.
- The cost of copying or duplication, not including labor, of paper copies of public records.
- The cost of computer discs, computer tapes, or other digital or similar media when the requester asks for records in non-paper physical media.
- The cost to mail or send a public record to a requestor.

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 Drain Commissioner 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.
- The Drain Commissioner 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 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 the hourly rate of six (6) times the state minimum wage.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes, or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the Drain Commissioner has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Drain Commissioner will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the Drain Commissioner's technology infrastructure.

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.
- The Drain Commissioner will provide records using double-sided printing, if it is cost-saving and available.

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.
- The Drain Commissioner may charge for the least expensive form of postal delivery confirmation.
- No cost will be incurred for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Drain Commissioner must:

- Reduce the labor costs by 5% for each day the Drain Commissioner exceeds the time permitted under FOIA up to a 50% maximum reduction, if ***any*** of the following applies:
    - The Drain Commissioner's late response was willful and intentional,
    - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email, or email attachment, or
    - The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15.231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter, or facsimile cover page.

- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6 - Waiver of Fees

The cost of the search for and copying of 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 Drain Commissioner 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

(a) **Indigence:** The FOIA Coordinator will discount 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 indigence.

An individual is not eligible to receive the waiver if:

- The requestor previously has received discounted copies of public records from the Drain Commissioner 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.

An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

(b) **Nonprofit organization advocating for developmentally disabled or mentally ill individuals:** The FOIA Coordinator will discount the first $20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities 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 Drain Commissioner.

Section 8 - 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, he or she may appeal to the Drain Commissioner by filing an appeal of the denial with the office of the Drain Commissioner.

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 FOIA Coordinator may create an FOIA Appeal Form (To Appeal a Denial of Records) that may be used.

Within 10 business days of receiving the appeal the Drain Commissioner will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial;
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, issuing a notice extending for not more than 10 business days the period during which the Drain Commissioner shall respond to the written appeal. The Drain Commissioner shall not issue more than 1 notice of extension for a particular written appeal.

If the Drain Commissioner fails to respond to a written appeal, or if the Drain Commissioner 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 Drain Commissioner, he or she may file a civil action in the Tuscola County Circuit Court within 180 days after the Drain Commissioner's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the Drain Commissioner to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public 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 Drain Commissioner 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 Drain Commissioner 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 Drain Commissioner 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 public record as part of its public function.

Section 9 - Appeal of a Claimed Excessive FOIA Processing Fee

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the Drain Commissioner to process an FOIA request exceeds the amount permitted by state law or under these Procedures and Guidelines, he or she must first appeal to the Drain Commissioner by submitting a written appeal for a fee reduction to the office of the Drain Commissioner.

The appeal must be in writing, specifically state the word "appeal," and identify how the required fee exceeds the amount permitted. The FOIA Coordinator may create an FOIA Appeal Form (To Appeal a Claimed Excessive Fee) that may be used.

Within 10 business days after receiving the appeal, the Drain Commissioner 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; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Drain Commissioner will respond to the written appeal. The Drain Commissioner shall not issue more than 1 notice of extension for a particular written appeal.

Where the Drain Commissioner reduces or upholds the fee, the determination must include a certification from the Drain Commissioner that the statements in the determination are accurate and that the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA.

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

If a civil action is commenced against the Drain Commissioner for an excess fee, the Drain Commissioner 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 Drain Commissioner does not provide for appeals of fees,
- The Drain Commissioner failed to respond to a written appeal as required, or
- The Drain Commissioner issued a determination to a written appeal.

If a court determines that the Drain Commissioner required a fee that exceeds the amount permitted under these Procedures and Guidelines or Section 4 of the FOIA, 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 Drain Commissioner has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Drain Commissioner 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 Procedures and Guidelines; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA procedures and guidelines promulgated by the Drain Commissioner, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of these Procedures and Guidelines is found to be in conflict with any previous procedures and

guidelines promulgated by the Drain Commissioner, 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 be in conflict with any state statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify these Procedures and Guidelines and all previous FOIA procedures and guidelines adopted by the Drain Commissioner, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA, provided that such modifications and rules are consistent with state law. The FOIA Coordinator shall inform the Drain Commissioner of any change to these Procedures and Guidelines.

These FOIA Procedures and Guidelines become effective November 16, 2026

Appendix of Tuscola County Drain Commissioner FOIA Forms

- Public Summary (attached)
- Fee Itemization Form (attached)

The foregoing Procedures and Guidelines were adopted by the Tuscola County Drain Commissioner.

Dara Hood
Tuscola County Drain Commissioner