Tuscola County Drain Commissioner

Public Summary of FOIA Procedures and Guidelines

It is the public policy of this state that all persons (except those persons incarcerated in state or local correctional facilities) 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 public employees. The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the Tuscola County Drain Commissioner's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the Drain Commissioner's FOIA Procedures and Guidelines. For more details and information, copies of the Drain Commissioner's FOIA Procedures and Guidelines are available at no charge at any Drain Commissioner office and on the Drain Commissioner's website: www.tuscolacounty.org/drain.

1. **How do I submit a FOIA request to the Drain Commissioner?**

   - A request must sufficiently describe a public record so as to enable the Drain Commissioner to find it.

   - Please include the words "FOIA" or "FOIA Request" in the request to assist the Drain Commissioner in providing a prompt response.

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

   - Written requests for public records may be submitted in person or by mail to any 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.

2. **What kind of response can I expect to my request?**

   - Within 5 business days after receiving an FOIA request, the Drain Commissioner will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The Drain Commissioner will respond to your 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;

- Issue a notice indicating that due to the nature of the request the Drain Commissioner needs an additional 10 business days to respond; or
- Issue a written notice indicating that the public record requested is available at no charge on the Drain Commissioner's website

- If the request is granted, or granted in part, the Drain Commissioner will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.

- If the cost of processing the request is expected to exceed $50.00, or if you have not paid for a previously granted request, the Drain Commissioner will require a deposit before processing the request.

3. **What are the Drain Commissioner's deposit requirements?**

- If the Drain Commissioner has made a good faith calculation that the total fee for processing the request will exceed $50.00, the Drain Commissioner will require that you provide a deposit in the amount of 50% of the total estimated fee. When the Drain Commissioner requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.

- If the Drain Commissioner receives a request from a person who has not paid the Drain Commissioner for copies of public records made in fulfillment of a previously granted written request, the Drain Commissioner will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request 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 best effort time frame estimated by the Drain Commissioner to provide the records;
  - Ninety (90) days have passed since the Drain Commissioner 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 Drain Commissioner has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

- The Drain Commissioner will not require the 100% 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 all applicable prior written requests; 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.

4. <u>How does the Drain Commissioner calculate FOIA processing fees</u>?

The Michigan FOIA statute 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. This may include the cost for copies of records already on the Drain Commissioner's website if you ask for the Drain Commissioner to make copies.

- The cost of computer discs, computer tapes, or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the Drain Commissioner's website if you ask for the Drain Commissioner to make copies.

- The cost to mail or send a public record to a requestor.

Labor Costs

- 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.

A labor cost will not be charged for the 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. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the Drain Commissioner's usual FOIA requests, because of the nature of the request in the particular instance. The Drain Commissioner must specifically identify the nature of the unreasonably high costs in writing.

Copying and Duplication

The Drain Commissioner must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, 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 be charged only if the Drain Commissioner has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.10 per sheet of paper.

- Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.

- The Drain Commissioner may charge for the least expensive form of postal delivery confirmation.

- No cost will be made for expedited shipping or insurance unless you request it.

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.

5. How do I qualify for an indigence discount on the fee?

The Drain Commissioner will discount the first $20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or

- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the $20.00 discount if you:

- Have previously received discounted copies of public records from the Drain Commissioner twice during the calendar year; or

- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement. For your convenience, the Drain Commissioner has provided an Affidavit of Indigence for the waiver of FOIA fees with the Drain Commissioner's FOIA Request Form, which is available on the Drain Commissioner's website: www.tuscolacounty.org/drain.

6. May a nonprofit organization receive a discount on the fee?

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is 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, may receive a $20.00 discount if the request meets all of the following requirements in the Act:

  - 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.

7. How may I challenge the denial of a public record or an excessive fee?

Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the Drain Commissioner by filing a written 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 you are seeking a reversal of the denial.

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

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the Drain Commissioner, you may file a civil action in the Tuscola County Circuit Court within 180 days after the Drain Commissioner's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the Drain Commissioner acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of $1,000.00.

Appeal of an Excess FOIA Processing Fee

If you believe that the fee charged by the Drain Commissioner to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the Drain Commissioner by filing a written appeal for a fee reduction to the office of the Drain Commissioner.

The appeal must specifically state the word "appeal," and identify how the required fee exceeds the amount permitted.

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

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;

- Upholding the fee and issue 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.

Within 45 days after receiving notice of the Drain Commissioner's determination of the processing fee appeal, you may commence a civil action in the Tuscola County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the Drain Commissioner acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of $500.00.