

West Michigan Community Mental Health (WCMCH)

Public Summary of FOIA Procedures and Guidelines

It is the public policy of this state that all persons (except for those persons incarcerated in federal, 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 West Michigan Community Mental Health's policies and procedures relevant to the general public. This is only a summary. For more details and information, copies of WCMCHS's policies/procedures are available at no charge at any WCMCH office location and on the agency's website: www.wmcmhs.org.

1. How do I submit a FOIA request?

- A request must sufficiently describe a public record so as to enable WCMCH to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by WCMCH may be submitted on the agency's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.
 - Any verbal request will be documented by WCMCH on the agency's FOIA Request Form.
 - No specific form to submit a written request is required. However a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the agency's website at www.wmcmhs.org and at any WCMCH office.
- Written requests may be delivered to WCMCH in person or by mail at 920 Diana Street, Ludington, Michigan 49431. Requests may also be faxed to: 231-845-7095 or emailed to kellyh@wmcmhs.org. To ensure a prompt response, faxed and emailed requests should contain the term "FOIA" or "FOIA Request" on the cover page/subject line.

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

- Within five business days after receiving a FOIA request, WCMCH 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. WCMCH 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 an additional ten business days are needed to respond, or
 - Issue a written notice indicating that the public record requested is available at no charge on the agency's website.
- If the request is granted, or granted in part, WMCMH may ask that payment, if less than \$50, 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, or if you have not paid for a previously granted request, WMCMH will require a deposit before processing the request.

3. What are WMCMH's deposit requirements?

- If the agency has made a good faith calculation that the total fee for processing the request will exceed \$50, the agency will require that you provide a deposit in the amount of 50 percent of the total estimated fee. When WMCMH 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 WMCMH receives a request from a person who has not paid the agency for copies of public records made in fulfillment of a previously granted written request, WMCMH will require a deposit of 100 percent 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 percent of the estimated fee;
 - The public records made available contained the information sought in the prior written request and remain in WMCMH's possession;
 - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by WMCMH to provide the records;
 - Ninety (90) days have passed since WMCMH 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 WMCMH; and
 - WMCMH has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- WMCMH will not require the 100 percent 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 WMCMH;
 - WMCMH 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.

4. How does WMCMH calculate FOIA processing fees?

A. Labor Costs

1. 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.
2. Labor costs will be charged at the hourly wage of the lowest-paid WMCMH employee capable of doing the work in the specific fee category, regardless of who actually performs work.
3. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. WMCMH may add up to 50 percent 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.
4. 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.
5. Contracted labor costs will be charged at six times the state minimum hourly wage.
6. 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 agency. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to WMCMH's usual FOIA requests, because of the nature of the request in the particular instance. WMCMH must specifically identify the nature of the unreasonably high costs in writing.

B. Copying and Duplication – WMCMH must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

1. 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 WMCMH has the technological capability necessary to provide the public record in the requested non-paper physical media format.
 - WMCMH will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the agency's technology infrastructure.
2. 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.

C. Mailing Costs

1. The cost to mail public records will use a reasonably economical and justified means.
2. WMCMH may charge for the least expensive form of postal delivery confirmation.
3. No cost will be made to expedited shipping or insurance unless you request it.

D. **Waiver of Fees** – The cost of the search for and copying of a public record may be waived or reduced if, in the judgment of the FOIA Coordinator and Executive Director, a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. WMCMH 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?

WMCMH will discount the first \$20 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 discount if you:

- Have previously received discounted copies of public records from the agency 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 a sworn statement. For your convenience, WMCMH has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the FOIA Request Form, which is available on the agency's website: www.WMCMH.org.

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

A. 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 by filing a written appeal of the denial with the office of the Executive Director.

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. You may use the FOIA Appeal Form (to appeal a denial of records), which is available on the agency's website: www.WMCMH.org.

Within ten business days of receiving the appeal the Executive Director 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 Executive Director, you may file a civil action in Circuit Court within 180 days after the Executive Director'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 WMCMH 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.

B. Appeal of an Excess FOIA Processing Fee

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

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. You may use the FOIA Appeal Form (to appeal an excess fee), which is available on the agency's website: www.WMCMH.org.

Within ten business days after receiving the appeal, the Executive Director/designee 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 ten business days the period during which the Executive Director/designee will respond to the written appeal.

Within 45 days after receiving notice of WMCMH's determination of the processing fee appeal, you may commence a civil action in Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50 percent 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 WMCMH acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.