

VILLAGE OF ONEKAMA

FOIA PROCEDURES AND GUIDELINES

I. INTRODUCTION

The Freedom of Information Act, 1976 PA 442 (MCL 15.231 to 15.246) (“FOIA”) mandates disclosure of most public records. To fulfill this mandate, the Village has established these FOIA Procedures and Guidelines (“Procedures”) to ensure that members of the Public receive all requested Village records, while not unduly Burdening the Village government.

II. FOIA COORDINATOR

The Village Clerk has been designated to serve as the FOIA Coordinator (“Coordinator”) as an additional duty. All questions regarding FOIA should be directed to the Coordinator. The Coordinator may designate an individual to act on his or her behalf concerning FOIA requests.

III. FOIA REQUESTS

- A. Requests for Village Records All requests for Village records (either to receive copies of or to inspect Village records) made pursuant to FOIA shall be made in writing and shall be processed by the Coordinator or his or her designee. In the event a written FOIA request is received by any other Village personnel, it shall be given immediately to the Coordinator.
- B. Request to Review Village Records If a FOIA request to review records is received, facilities should be made available to inspect records during the Village’s normal business hours provided that the records have been adequately described.
- C. Request Made by FAX, Email, or other Electronic Means These requests shall be deemed received by the Coordinator one business day after the date the electronic transmission is made and shall be processed in the same manner as a written request. If the request is made by an email which is directed to the “spam” or “junk” folder, the request shall be deemed received one business day after the Village first becomes aware of the request in that folder. The Coordinator shall make a record notation of the dates when the request was delivered to that folder and when the Village first became aware of the request.
- D. Informal Requests The FOIA Coordinator may provide readily identifiable Village records without a written request. Such an oral request is not considered as made under, or subject to, FOIA. Examples of these types of records are:
 - 1. A property tax assessment card and the current Village property tax assessment roll which will be made available to an individual.
 - 2. A single set of meeting minutes for a meeting held within the prior twelve month period.
 - 3. Ordinances which are identified by specific name or number.

IV. PROCESSING FOIA REQUESTS

The Coordinator shall maintain a file of all written requests received showing the nature and date of the request and its disposition and the disposition date. A request must include a detailed document description sufficient to enable the Coordinator to identify the document.

- A. Time For Response The Coordinator shall provide one of the below listed responses, no more than five business days after the request has been made, unless a one-time extension of not more than ten business days has been issued or a written extension has been entered into by the requesting person. The extension shall provide an estimated date for the records to be produced.

1. Grant the Request A FOIA Request Response and all of the requested documents shall be provided to the requesting person.
 2. Deny the Request The person shall be sent a FOIA Request Response stating the reasons for the denial and both outlining the option to appeal the denial to the Village Council and outlining the immediate right to file a civil action in the Manistee Circuit Court. The Coordinator's failure to provide a timely response to the request constitutes a denial. A request may be denied because, among other reasons, the record does not exist, cannot be identified, or is exempt from disclosure under FOIA.
 3. Grant the Request in Part and Deny the Request in Part Material which is partially exempt and partially subject to disclosure shall be separated or deleted, as appropriate. A FOIA Request Response and the non-exempt material shall be provided to the requesting person or offered for copying or inspection. If it will not compromise the exempt material, a description of the separated/deleted information will also be provided.
 4. Good Faith Deposit Required If the Village estimates the fee to process a FOIA request will be greater than fifty dollars, the Village will require a good faith deposit from the requestor before providing the requested public records. The deposit shall not exceed one half of the total estimated fee. Any written notice containing a notice of deposit shall also contain a best efforts estimate by the Village regarding the time frame after a deposit is received that it will take the Village to provide the public records to the requestor. The time frame estimate is not binding upon the Village, but the Village shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on the public policy stated in Section 1 of the FOIA, being MCL 15.231, and the nature of the request in the particular instance.
- B. Requirements Concerning Requests to Review Documents
1. The requesting person shall schedule an appointment with the Coordinator to review documents. The Coordinator will make the determination as to when and where the inspection of records will take place during normal business hours in the Village Offices. Inspections will be limited to four hour periods which may be shortened to avoid unreasonable interference with primary Village functions
 2. If the Coordinator determines that original records are to be inspected, the original records shall not be marked, defaced, destroyed, or altered in any manner. Pencil and paper will be made available for note taking. A Village designee will be present at all times, and the records are not allowed to be removed from the inspection area.
 3. Review of original documents will be limited to inspection of copies where the original documents contain exempt information, are old or delicate, or are in digital form not available for public inspection, or where it would be less disruptive to the functioning of the Village.
- C. Document Request Available on Village Web Site In accordance with FOIA Section 4 (5), if a FOIA request involves records which are available on the Village's Web Site, the Coordinator will notify the requesting person of the web address and location of such records. If, after notification, copies are still requested, the Coordinator shall provide the copies and shall charge a Fee.
- D. Subscription Basis Request If a request is made for records which are issued on a continuing basis, such as Council meeting minutes, the records shall be provided on a six-month renewable subscription. The Coordinator shall maintain a record of the person's name and address, the records subscribed to, the Fee (if any), and the expiration date of the subscription.
- E. FOIA Request Fee The requesting person may be charged a Fee in accordance with the following:
1. Fees will be uniform and not dependent upon the identity of the requesting person.
 2. Fees will be itemized using a detailed itemization of fees and will include:

- a. Labor costs for the search, location, and examination of public records will be calculated using the hourly wage of the Village's lowest paid employee capable of conducting the search, location, and examination, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of fifteen minutes with all partial increments rounded down. Labor costs shall also include up to fifty percent (50 %) of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - b. Labor costs for the review of public records and separation and deletion of exempt from nonexempt material will be calculated using the hourly wage of the Village's lowest paid employee capable of conducting the review and separation and deletion of exempt from nonexempt material, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of fifteen minutes with all partial increments rounded down. Labor costs shall also include up to fifty percent (50 %) of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - c. Nonpaper physical media costs will be calculated using the actual and most reasonably economical cost of computer discs, computer tapes, and other digital and similar media provided by the Village.
 - d. Duplication and publication costs will be calculated using the actual total incremental cost of necessary duplication and publication of a public record, not including labor. The actual and incremental cost, calculated per sheet, shall be charged and will not exceed ten cents per sheet of paper for letter (8 ½ by 11) or legal (8 ½ by 14) size paper. The Village shall use the most economical means available for making copies, including the use of double-sided printing, if cost-saving and available.
 - e. Labor costs for the duplication and publication of public records, including making paper copies, making digital copies, or transferring digital public records to be produced on nonpaper physical media or through electronic means, will be calculated using the hourly wage of the Village's lowest paid employee capable of duplicating or publishing the public records, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of fifteen minutes with all partial increments rounded down. Labor costs shall also include up to fifty percent (50 %) of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of fringe benefits.
 - f. Actual costs of mailing using a reasonably economical and justifiable manner.
3. No Village employee shall stipulate to work overtime or include overtime wages in the labor costs described in these Procedures.
 4. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the Village's lowest paid employee capable of monitoring the inspection. NOTE: Section 3 (3) of the FOIA, being MCL 15.233 93 0, provides, in pertinent part, that "(a) public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."
 5. If a statute authorizes the sale or production of public records to the public for a specified fee, or if a fee for production of public records is otherwise set by statute, the Village will charge the statutory fee in lieu of a fee calculated using the guidelines set forth above.

- F. Waiver of Fee The Fee may be waived by the FOIA Coordinator based on a determination that providing the requested records primarily benefits the general public. The Fee for copies of public records shall be without charge for the first \$ 20.00 for each request by an individual, entitled to FOIA information, who;
1. State in an affidavit that he or she is indigent and receiving specific public assistance, and includes a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration; or,
 2. Is not receiving specific public assistance and submits an affidavit stating facts showing inability to pay the Fee because he or she is indigent and includes a statement that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

V. RECORD RETENTION

The Coordinator shall maintain FOIA Requests and FOIA Request Responses for one year.

VI. APPEALS

- A. Appeal of Denial of Request If a person's request for a public record is denied, in whole or in part, the person may chose either to commence a civil action as explained in VI.B below or to file a written appeal, as follows:
1. The appeal must be submitted in writing to the Village Council.
 2. The written appeal must state specifically both the word "appeal" and the reasons why the denial of the request must be reversed.
 3. After an appeal is received, the Village Council shall either: (a) place the appeal on the agenda for the next regularly scheduled meeting and decide the appeal within ten business days thereafter; or (b) schedule a special meeting to consider the appeal, which special meeting should be held no later than ten business days following the next regularly scheduled meeting.
 4. The Village Council may deliberate and shall take one of the following actions in response to the filing of an appeal:
 - a. Reverse the denial and direct that the documents be provided.
 - b. Issue to the requesting person a written notice affirming the denial.
 - c. Reverse the denial in part, direct that certain documents be provided, and issue a written notice to the person affirming the partial denial.
 - d. Under unusual circumstances, issue a one-time notice extending for not more than ten business days the period during which the Village Council shall respond to the written appeal.
- B. Commencement of a Civil Action A person, whose FOIA request has been denied by the Coordinator or by the Village Council on appeal, may chose to commence, within 180 days of the denial, a civil action under FOIA Section 10 in the Manistee Circuit Court. If the Court determines that the Village has not complied with FOIA Section 5 and orders any requested record to be disclosed, damages and attorneys' fees may be awarded.
- C. Fee Appeal A requesting person may appeal the amount of a fee if that fee exceeds the amount permitted under these Procedures and FOIA.
1. A Fee amount appeal be made to the Village Council in compliance with the provisions of VI.A. above. The appeal must specifically include the word "appeal" and identify how the required fee exceeds the amount permitted under these Procedures or FOIA.
 2. Notwithstanding C.1 above, a requesting person may, under FOIA, commence a civil action in the Manistee County Circuit Court for a fee reduction; provided, however that such action must be filed within 45 days after receiving notice of the required fee or a determination of a fee amount appeal by the Village Council.

3. Within ten business days after receiving a written appeal under C.1 above, the Village Council shall do one of the following:
 - a. Waive the fee.
 - b. Reduce the fee, state the specific basis for requiring the reduced fee, and issue to the requesting person a written determination which complies with FOIA Section 4.
 - c. Uphold the fee, state the specific basis for requiring the fee, and issue to the requesting person a written determination which complies with FOIA Section 4.
 - d. Issue a one-time notice extending for not more than ten business days the period during which the Village Council must respond to the written appeal. The notice of extension shall include detailed reasons why the extension is necessary.
4. In accordance with FOIA, the Village Council will not be considered to have received a written fee appeal until the first regularly scheduled Village Council meeting after submission of the written appeal.

VII. AMENDMENTS TO PROCEDURES AND GUIDELINES

The Village Council may amend or supplement these Procedures and Guidelines, from time to time, in the Village Council's sole discretion

VIII. AVAILABILITY OF PROCEDURES AND GUIDELINES AND SUMMARY

A copy of these Procedures and Guidelines and a copy of the Summary thereof shall be available at the Village Office and posted on the Village's Web Site, in accordance with the FOIA.

IX. EFFECTIVE DATE

The effective date of these Procedures and Guidelines is November 18, 2015.