



Policy No. 006

Branch County Conservation District Board

Subject: FOIA Policy

ADOPTED BY THE BOARD OF THE BRANCH DISTRICT ON: _____

The following policy shall govern the Branch County Conservation District response to Freedom of Information Act (FOIA) requests.

The District will initially respond in accordance to State of Michigan Law within 5 days to any written request excluding all legal exemptions and following any guidelines described below.

The District has assigned the Branch Conservation District Manager as their FOIA Coordinator. The Coordinator will place a received date on any FOIA requests received. If received past noon on a given day or anytime by email, the request will be consider to have been submitted on the following day. If submitted by email, the Coordinator will note in which folder it was found; i.e. Junk, Spam, Inbox and when the Coordinator became aware of the request. The request will be considered as submitted on the day following discovery.

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 District is not required to create any new public record/s or make compilation or summary of information which does not already exist. Neither the FOIA Coordinator, District employees nor Board of Directors are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The district will protect the privacy of our clients, partners, Board of Directors and staff as directed by District rules, and the State of Michigan and Federal Personally Identifiable Information (PII) laws.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by Branch Conservation District must do so in writing. The request must sufficiently describe a public record so as to enable District personnel to identify and find the requested public record.



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

Written requests for public records may be submitted in person or by mail to the District Office. Requests may also be submitted by email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing, if submitted to a staffer or board member.

A person may request that public records be provided on non-paper physical media, electronically mailed or other otherwise provided to him or her in lieu of paper copies. The District 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 who makes a verbal, non-written request for information believed to be available on the District's website, where practical and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

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 a longer response period is otherwise agreed to in writing by the person making the request, the District will issue a response within 5 business days of receipt of a FOIA request. If a request is received after noon on a given day or by email, the request is deemed to have been received on the following business day. The District will respond to the 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 District needs an additional 10 business days to respond.
- Issue a written notice indicating that the public record requested is available at no charge on the District's website.

The FOIA Coordinator, or such other District staff as he or she may designate, shall have exclusive authority to deny a FOIA request, either entirely or in part.

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 shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the District's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the District, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the District will require a good-faith deposit before processing the request. Full payment will be required prior to distribution of all documents.

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 District to process the request and also provide a best efforts estimate of a time frame it will take the District to provide the records to the requestor. The best efforts estimate shall be nonbinding on the District, 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.

If the request is denied or denied in part, the FOIA Coordinator or his or her designee will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A letter stating that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the District; or
- An explanation of the person's right to submit an appeal of the denial to either the Conservation District Board or seek judicial review in Branch County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000.00, should they prevail in Branch County Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator or his or her designee.

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.

The District shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours and in accordance with State and Federal PII



laws. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect District records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal District operations.

The FOIA Coordinator shall, upon written request, furnish a copy of a public record at no additional cost to the person requesting the public record.

Absent a waiver by the FOIA Coordinator or his or her designee, in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records.

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the District, 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 fully paid the District 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 District's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the District to provide the records;
- 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 District; 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 District;
- the District is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the District.



Section 5: Calculation of Fees

Consistent with the authority granted by statute, the District intends to charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record so that its general fund budget is not unduly burdened by the costs associated with processing FOIA requests.

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

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

- The particular request incurs costs greater than incurred from the typical or usual request received by the District.
- Volume of the public record requested.
- Whether the amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested exceeds 15 minutes.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The District may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record, if the failure to charge a fee would result in unreasonably high costs to the District.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed, if the failure to charge a fee would result in unreasonably high costs to the District.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record, including the least expensive form of postal delivery confirmation; as well as the actual cost of expedited shipping or insurance when requested.



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.

Labor costs will be charged at the hourly wage of the lowest-paid District 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 District may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits for lowest-paid District employee, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

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 District has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the District's and (since housed by the Federal USDA) Federal technological infrastructure, the District will procure any requested non-paper media and will not accept non-paper media from the requestor.

The cost to provide paper copies of records will be based on the following requirements:

- 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 of paper will reflect the actual cost of reproduction.
- The District may provide records using double-sided printing, if cost-saving and if 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 District may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:



- Reduce the labor costs by 5% for each day the District exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:

- The late response was willful and intentional.
- The written request, within the first 250 words of the body of a letter facsimile, email or email attachment conveyed a request for information.
- 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 such can be considered as primarily benefitting the general public.

In determining whether the general public is primarily benefited, the FOIA Coordinator shall consider the following factors, none of which shall be determinative:

- whether the public record being disclosed serves the public policy purposes set forth at Section 1 of the FOIA;
- whether the release primarily serves a private or commercial purpose;
- whether the release implicates the rights of third persons;
- whether the waiver of the fee is in the best interests of the District; and
- the manner in which similar requests have been treated.

The FOIA Coordinator will waive 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
- not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the District 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.

The affidavit shall be a sworn statement, made under the penalty of perjury. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

A nonprofit organization designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the 7

Protection and Advocacy for Individuals with Mental Illness Act, 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, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

Section 7: 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 file an appeal of the denial directed to the District Board Chairman and filed with the District Manager. 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.

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

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reversing the disclosure denial in part and upholding the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records, the Chairman may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.

Whether or not a requestor submitted an appeal of a denial to the Chairman, he or she may file a civil action in Branch County Circuit Court within 180 days after the District's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.



If the court determines that the District arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages totaling no more than \$1,000.

Section 8: Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the District to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the District Chairman. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Chairman 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, accompanied by a certification by the Chairman that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- upholding the fee and issuing a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Chairman that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Chairman will respond to the written appeal.

Within 45 days after receiving notice of the Chairman's determination of a fee appeal, a requestor may commence a civil action in Branch County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the District is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the District required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails 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 District has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$1,000.

Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the District Board or the District Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA



Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the District Board or the District Administration, 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 this policy and all previous policies adopted by the District Board or the District Administration, 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 statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the District Board of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines become effective (Date).

Section 10: Appendix of District of Coldwater FOIA Forms

The FOIA Coordinator is authorized to prepare a Public Summary of these FOIA Policies and Guidelines and develop forms necessary or convenient for processing FOIA requests, including, but not limited to the following:

- Request Form
- Extension Form
- Denial Form
- Denial Appeal Form
- Fee Waiver Affidavit Form
- Detailed Itemization of Fees Form
- Fee Appeal Form

Board Chairman Signature

Date