



# CHARTER TOWNSHIP OF INDEPENDENCE

## FREEDOM OF INFORMATION ACT (FOIA)

### POLICY SUMMARY

**It is the public policy of the State of Michigan 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 public shall be informed so that they may full participate in the democratic process.**

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the Charter Township of Independence **FOIA Policy Summary** of the **FOIA Freedom of Information Act Policy** relevant to the general public. This is only a summary; for more details and information, copies of the entire **FOIA Freedom of Information Act Policy** are available at no charge on the Township's website at [www.indtwp.com](http://www.indtwp.com), at the Township Clerk's Office and at all other Township offices.

#### **1. How do I submit a FOIA request to the Charter Township of Independence?**

- A request must sufficiently describe a public record to enable the Township to find it.
- Include the words "FOIA" or "FOIA Request" in the request to assist the Township in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Township may be submitted on the **FOIA Request for Public Records Form**, in any other form of writing (letter, fax, email, etc.), or by verbal request.
- **Written requests** may be delivered to Township Hall in person or by mail to the attention of the **FOIA Coordinator**: 6483 Waldon Center Dr. - Clarkston, Michigan 48346
  - No specific form to submit a written request is required. However a **FOIA Request for Public Records Form** and other FOIA related forms are available to the public on the Township's website at [www.indtwp.com](http://www.indtwp.com), at the Township Clerk's Office and all other Township offices.
- **Faxed requests** may be sent to: (248) 625-2585. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.
- **E-mail requests** may be sent to: [FOIA@indtwp.com](mailto:FOIA@indtwp.com). To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.
- **Verbal requests** will be documented by the Township on a **FOIA Request for Public Records Form**.

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

- **Within 5 business days** after receiving a FOIA request the Township 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 Township 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 Township 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 Township's website.
- If the request is granted, or granted in part, the Township 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 Township will require a deposit before processing the request.

### 3. What are the Township's deposit requirements?

- If the Township has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the Township will require that you provide a deposit in the amount of 50% of the total estimated fee. When the Township 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 Township receives a request from a person who has not paid the Township for copies of public records made in fulfillment of a previously granted written request, the Township 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 Township's possession;
  - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the Township to provide the records;
  - **90 days have passed** since the Township 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 Township; and
  - The Township has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The Township 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 Township;
  - The Township is subsequently paid in full for all applicable prior written requests; or
  - **365 days** have passed since the person made the request for which full payment was not remitted to the Township.

### 4. How does the Township calculate FOIA processing fees?

The Michigan FOIA statute permits the Township 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 Township.
- **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 Township.

- **Copying or duplication costs**, not including labor, for paper copies of public records. This may include the cost for copies of records already on the Township’s website if you ask for the Township to make copies.
- **Computer discs, computer tapes or other digital or similar media costs** when the Requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the Township’s website if you ask for the Township to make copies. The Township shall procure any non-paper media and shall not accept media from the Requestor in order to ensure integrity of the Township’s technology infrastructure.
- **Mailing costs** to mail or send a public record to a Requestor.

**Labor Costs:**

- **Labor costs** will be estimated and charged in **15-minute increments**, with all partial time increments rounded down. There will be **no charge** for labor costs **less than 15 minutes**.
- **Labor costs** will be charged at the hourly wage of the lowest-paid Township 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 Township 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 as **specified by the Requestor**; overtime costs will not be used to calculate the fringe benefit cost.
- **Contracted labor costs** shall not exceed 6 times the State of Michigan’s minimum hourly wage as follows:

EFFECTIVE DATE	State of Michigan’s Minimum Hourly Wage	FOIA Contracted Labor Costs Six (6) Times Hourly Wage
September 1, 2014	\$8.15	\$48.90
January 1, 2016	\$8.50	\$51.00
January 1, 2017	\$8.90	\$53.40
January 1, 2018	\$9.25	\$55.50

**Labor costs** 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 Township. **Costs** are determined to be unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the Township’s usual FOIA requests because of the nature of the request in the particular instance. The Township must specifically identify the nature of the unreasonably high costs in writing.

**Copying and Duplication:**

The Township 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 Township 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 Township may charge for the least expensive form of postal delivery confirmation.
- No cost will be apply for expedited shipping or insurance costs as **specified by the Requestor.**

### **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 Township Board has identified specific records or types of records it deems should be made available for no charge or at a reduced cost in the **FOIA Freedom of Information Act Policy**.

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

The Township will discount the **first \$20.00 of fees** for a request if you submit a **FOIA Fee Waiver Affidavit of Indigence Form** which is a sworn statement affirming 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 Township 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. A **FOIA Fee Waiver Affidavit of Indigence Form** is on the Township’s website at [www.indtwp.com](http://www.indtwp.com), at the Township Clerk’s Office and at all other Township offices.

## **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 Township Board.

## 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 Township Board by filing a written appeal of the denial with the office of the Township Clerk.

The appeal **must be in writing** and 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 of Denial of Records Form** which is available on the Township’s website at [www.indtwp.com](http://www.indtwp.com), the Township Clerk’s Office and all other Township offices.

The Township Board is not considered to have received a written appeal until the first regularly scheduled Township Board meeting following the submission of the written appeal. **Within 10 business days** of receiving the appeal, the Township Board will respond in writing in **one** of the following ways:

- Reverse the disclosure denial;
- Uphold 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 Township Board, you may file a civil action in Oakland County Circuit Court **within 180 days** after the Township’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 Township 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 Township to process your FOIA request exceeds the amount permitted by state law, **you must first appeal to the Township Board** by filing a written appeal for a fee reduction to the office of the Township Clerk.

The appeal **must be in writing** and specifically state the word “appeal” and identify how the required fee exceeds the amount permitted. You may use the Township **FOIA Appeal of Excess Processing Fee Form** which is available on the Township’s website at [www.indtwp.com](http://www.indtwp.com), the Township Clerk’s Office and all other Township offices.

The Township Board is not considered to have received a written appeal until the first regularly scheduled Township Board meeting following the submission of the written appeal. **Within 10 business days** of receiving the appeal, the Township Board will respond in writing in **one** of the following ways:

- Waive the fee;
- Reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Uphold the fee and issue a written determination indicating the specific basis that supports the required fee; **or**
- Issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Township Board will respond to the written appeal.

**Within 45 days** after receiving notice of the Township Board’s determination of the processing fee appeal, you may commence a civil action in Oakland 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 Township acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.00.