

DICKINSON COUNTY ROAD COMMISSION FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

Preamble: Statement of Principles

It is the policy of the Dickinson County Road Commission that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of the who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The Dickinson County Road Commission's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Dickinson County Road Commission acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Dickinson County Road Commission acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The Dickinson County Road Commission Board has established the following written procedure and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the Dickinson County Road Commission and explaining how to understand the Dickinson County Road Commission's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal.

Section 1: General Policies

The Dickinson County Road Commission acting pursuant to the authority at MCL 15.236, designates the Assistant Director of Finance as the FOIA Coordinator. He or she is authorized to designate other Dickinson County Road Commission staff to act on his or her behalf to accept and process written requests for the Road Commission's public records and approval and denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If the request is sent by email and delivered to a Dickinson County Road Commission spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator become aware of the request. The FOIA Coordinator shall note in

the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator becomes aware of the request.

The FOIA Coordinator shall review the Dickinson County Road Commission spam or junk-mail folders on a regular basis, which shall be no less than once month. The FOIA Coordinator shall work with the Information Technology staff to develop administrative rules for handling spam or junk-mail so as to protect the Dickinson County Road Commission systems from computer attacks which may be imbedded in an electronic FOIA Request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and the Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The Dickinson County Road Commission is not obligated to create a new public record or make a compilation or summary of information which already exists. Neither the FOIA Coordinator nor other Dickinson County Road Commission staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the Dickinson County Road Commission on file for a period of at least one year.

A copy of the Procedure and Guidelines document and the written Public Summary are available for free at the Dickinson County Road Commission's office and website at www.dickinsoncrc.com.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Dickinson County Road Commission may be submitted in any form of writing (letter, fax, email, etc.) or by verbal request. Written requests for public records may be submitted in person or by mail. The request must sufficiently described a public record as to enable the Dickinson County Road Commission staff to identify and find the requested public record. Upon the receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

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.

A person may request that public records be provided on non-paper physical media, electronically mailed or otherwise provided to him or her in lieu of paper copies. The Dickinson County Road Commission 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 may subscribe to future issues of public records that are created, issued or disseminated by the Dickinson County Road Commission on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the Dickinson County Road Commission's website, where practicable 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 shall deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, within 5 business day of receipt of a FOIA request the Dickinson County Road Commission will issue a response. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day. The Dickinson County Road Commission 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 Dickinson County Road Commission needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Dickinson County Road Commission's website.

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 and the written Public Summary will be provided to the requestor free of charge with the response to a written request for public records. These documents may also be found at www.dickinsoncrc.com and may be referenced in lieu of providing paper copies.

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

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor had not paid in full for a previous granted request, the Dickinson County Road Commission will require a good-faith deposit before processing the request.

In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs to be incurred by the Dickinson County Road Commission to process the request and also provide a best efforts estimate of a time frame it will take to provide the records to the requestor. The best efforts shall be non-binding on the Dickinson County Road Commission, 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 will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a request for public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the Dickinson County Road Commission; or
- An explanation or description of the public record or information within a public record that is separated or deleted from public record; and
- An explanation of the person's right to submit an appeal of denial to either the Dickinson County Road Commission Board or seek judicial review in the Dickinson County Circuit Court; and
- An explanation of the rights to receive attorney's fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of 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 Dickinson County Road Commission shall provide reasonable facilities and opportunities to inspect public records during normal business hours. The FOIA Coordinator is authorized to set forth rules regulating the manner in which records may be viewed so as to protect the Dickinson County Road Commission from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Dickinson County Road Commission operations.

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

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50 based on a good-faith calculation by the Dickinson County Road Commission, the requestor will be asked to provide a deposit of not exceeding ½ of the total estimated fee.

If a request for public records is from a person who had not fully paid the Dickinson County Road Commission for copies of public records made in fulfillment of a previous 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 100% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the Dickinson County Road Commission's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Dickinson County Road Commission to provide 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 Dickinson County Road Commission; 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 of any of the following apply:

- The person making the request is able to show proof of prior payment in full to the Dickinson County Road Commission;
- The Dickinson County Road Commission 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 Dickinson County Road Commission.

Section 5: Calculation of Fees

A fee may be charged labor costs of copying/duplication.

A fee will **not** be charged for the labor costs 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 Dickinson County Road Commission because the nature of the request in the particular instance, and the Dickinson County Road Commission specifically identifies the nature of the unreasonable high costs.

The following factors shall be used to determine an unreasonable high cost to the Dickinson County Road Commission:

- The particular request incurs costs greater than incurred from the typical or usual request received by the Dickinson County Road Commission.
See Bloch v Davison Community Schools, 2011 Michigan Court of Appeals, Unpublished, April 26, 2011.
- Volume of the public record requested.
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one Dickinson County Road Commission department or various Dickinson County Road Commission departments is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

Dickinson County Road Commission may charge for the following costs associated with processing a FOIA request:

- Labor costs associated with copying or duplicating, 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.
- Labor costs associated with a review of a record to separate and delete information exempt from non-exempt.
- The cost of copying or duplication, not including labor, of paper copies of public records.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media.
- The cost to mail or send a public record to a requestor.

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 to be rounded down.
- Labor costs will be charged at the hourly wage of the lowest paid Dickinson County Road Commission employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The Dickinson County Road Commission may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefit, 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 fringe benefit costs.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).

The costs 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 economic cost for non-paper media.
- This cost will only be assessed if the Dickinson County Road Commission has the technological capability necessary to provide the public record in the requested non-paper physical media format.

- The Dickinson County Road Commission will procure any non-paper media and will not accept media from the requestor in order to ensure the integrity of the Dickinson County Road Commission's technological integrity.

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 costs of the reproduction.
- The Dickinson County Road Commission will provide records using double-sided printing, if cost-saving and 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 Dickinson County Road Commission 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 Dickinson County Road Commission must:

- Reduce the labor costs by 5% for each day the Dickinson County Road Commission exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
 - The Dickinson County Road Commission's late response was willful and intentional.
 - The written request conveyed a request for information with in the first 250 words of the body of a letter, fax, email or email attachment, or
 - 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 the envelope or in the subject line of an email, letter or fax 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 judgement of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered a primarily benefitting the general public. The Dickinson County Road Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

The FOIA Coordinator will waive the first \$20 of processing fee for a request if the person requesting a public records submits an affidavit stating that they are:

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

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records 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.

An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form for use by the public.

A nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individual 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 on the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by a public body.

Section 8: 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 improperly exempted from the disclosure, he or she may appeal to the Dickinson County Road Commission Board by filing an appeal of the denial. 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. The Dickinson County Road Commission FOIA Appeal Form may be used.

The Board of Dickinson County Road Commissioners is not considered to have received a written appeal until the first regularly scheduled Dickinson County Road Commission Board meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the Dickinson County Road Commission Board will respond in writing by:

- Reversing the disclosure notice;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Dickinson County Road Commission Board shall respond to the written appeal. The Dickinson County Road Commission Board shall not issue more than 1 notice for a particular written appeal.

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

If a court determines a public record is not exempt from disclosure, it shall order the Dickinson County Road Commission to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy or receive a copy of all or portion of a public record prevails in such an action, the court shall award reasonable attorney's fees, costs, and disbursements. If the person or Dickinson County Road Commission prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorney's fees, costs, and disbursements.

If the court determines that the Dickinson County Road Commission arbitrarily and capriciously violated this act by refusing or delaying the disclosure of copies of a public record, the court shall order the Dickinson County Road Commission to pay a civil fine of \$1000. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1000. The damages shall not be assessed against an individual, but shall be assessed

against the next succeeding public body that is not an individual and that kept or maintained the public records.

Section 9: Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the Dickinson County Road Commission to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first submit a written appeal for a fee reduction to the Dickinson County Road Commission Board.

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

The Dickinson County Road Commission Board is not considered to have received a written appeal until the first regularly scheduled Board meeting following the submission of the written appeal.

Within 10 business days after receiving the appeal, the Dickinson County Road Commission Board will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fees;
- Uphold the fee and issuing 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 Dickinson County Road Commission Board will respond to the written appeal. The Dickinson County Road Commission Board shall not issue more than 1 notice of extension for a particular written appeal.

Where the Dickinson County Road Commission Board reduces or upholds the fee, the determination must include a certification from the Dickinson County Road Commission Board that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines in Section 4 of the FOIA.

Within 45 days after receiving notice of the Dickinson County Road Commission Board's determination of an appeal, the requesting person may commence a civil action in Dickinson County Circuit Court for a fee reduction.

If a civil action is commenced against the Dickinson County Road Commission for an excess fee, the Dickinson County Road Commission is not obligated to complete that processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless one of the following applies:

- The Dickinson County Road Commission does not provide for appeals of fees,
- The Dickinson County Road Commission Board failed to respond to a written appeal as required, or
- The Dickinson County Road Commission Board issued a determination to a written appeal.

If the court determines that the Dickinson County Road Commission required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the Dickinson County Road Commission Board has arbitrarily and capriciously violated FOIA by charging an excessive fee, the court shall order the Dickinson County Road Commission to pay a civil fine of \$500. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500. The fine and damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual that kept or maintained the public records.

Section 10: Conflict with Prior FOIA Policies and Procedures: Effective Date

To the extent that these Procedures and Guideline conflict with previous FOIA policies promulgated by the Dickinson County Road Commission Board or the Dickinson County Road Commission 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 promulgated by the Dickinson County Road Commission Board or the Dickinson County Road Commission 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 Dickinson County Road Commission Board or the Dickinson County Road Commission 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 pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent State law. The FOIA Coordinator shall inform the Dickinson County Road Commission Board of any changes in these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

Section 11: Appendix of the Dickson County Road Commission FOIA Forms

- Request Form
- Denial Form
- Detailed Cost Itemization Form
- FOIA Appeal Forms (Records & Fees)