

# **FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES**

*Bedford Public Schools*

The District establishes the following procedures and guidelines to implement Michigan's Freedom of Information Act (FOIA), as amended by 2014 PA 563. See MCL 15.231 *et seq.* These procedures and guidelines shall hereinafter be referred to as the "District's FOIA Policies." A copy of the District's FOIA Policies shall be available and easy to locate on the District's website. (*Reference Policy 2810*)

## **Section 1: Definitions**

For purposes of the District's FOIA Policies, the following definitions apply:

- 1.1 Board:** The Bedford Public Schools Board of Education.
- 1.2 District:** Bedford Public Schools.
- 1.3 FOIA:** The Michigan Freedom of Information Act, MCL 15.231 *et seq.*
- 1.4 FOIA Coordinator:** The individual responsible under the FOIA for accepting and processing requests for the District's public records, and for approving a denial of such a request pursuant to MCL 15.235. As the District's Chief Administrative Officer, the Bedford Public Schools Superintendent is hereby named the District's FOIA Coordinator. Under MCL 15.236(3), the FOIA Coordinator may designate another individual to act on his or her behalf in accepting and processing requests, and approving denials of requests. Therefore, the Principals of each school within the District are hereby named Assistant FOIA Coordinators, whose responsibilities are further described in **Section 2: Personnel Authorized to Process FOIA Requests.**
- 1.5 Person:** An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correction facility in this state or any other state, or in a federal correctional facility.
- 1.6 Public record:** A writing prepared, owned, used, in the possession of, or retained by the District in the performance of an official function, from the time it is created. Public record does not include computer software. Public records are separated into 2 classes:
  - a. Those that are exempt from disclosure under Section 13 of the FOIA, MCL 15.243.

- b. All public records that are not exempt from disclosure under Section 13 and which are subject to disclosure under the Act.

**1.7 Standard FOIA Fee Form:** The standard form used by the District to provide a detailed itemization of fees charged for responses to written FOIA requests, as required by MCL 15.234(4). The form clearly lists and explains the allowable charges for the 6 fee components listed under MCL 15.234(1).

**1.8 Superintendent:** The current superintendent of the Bedford Public Schools.

**1.9 Written public summary:** The District's summary of its specific procedures and guidelines for implementing the FOIA, written in a manner so as to be easily understood by the general public, and including information relevant to the general public regarding:

- a. How to submit written requests to the District;
- b. How to understand the District's written responses to FOIA requests;
- c. Deposit requirements;
- d. Fee calculations; and
- e. Avenues for challenge and appeal.

The written public summary shall be posted and maintained on the District's website.

**1.10 Written request:** A writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

**Section 2. Personnel Authorized to Process FOIA Requests**

**2.1 FOIA Coordinator**

- a. Accepts and processes FOIA requests.
- b. Approves denial of FOIA requests.
- c. Directs and coordinates the District's FOIA policies and procedures subject to the District's FOIA Policies.
- d. Trains District personnel for FOIA compliance.
- e. Provides the Board with information and assistance when a FOIA denial is appealed to the circuit court.

**2.2 Assistant FOIA Coordinator**

- a. Accepts and processes FOIA requests for public records maintained in their respective school buildings.
- b. Approves denial of FOIA requests.

**2.3 Other**

- a. Routine day-to-day inquiries to the District or schools for information shall be handled appropriately by District staff. These procedures shall apply to requests specifically made under the Michigan Freedom of Information Act.

**Section 3: Requests to Inspect or Copy Public Records**

- 3.1 Written Request Required.** A request to inspect, copy, or receive copies of a public record under the FOIA must be made in writing and must sufficiently describe the public record so that the District can find the public record.
- 3.2 Request for Subscription.** A person may also make a written request to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.
- 3.3 Date Facsimile or Electronic Transmission Received.** A request for records made by facsimile, electronic mail, or other electronic transmission will be considered received by the District one business day after the electronic transmission is made, in accordance with MCL 15.235(1).
- a. If a written request sent by electronic mail is delivered to the District's, FOIA Coordinator's, or Assistant FOIA Coordinator's spam or junk mail folder, the request will be considered received one business day after the District first becomes aware of the written request.
- 3.4 Receipt by Unauthorized Personnel.** All District personnel not authorized under Section 2 to respond to a FOIA request shall direct the request to the appropriate FOIA Coordinator or Assistant FOIA Coordinator, as provided by Section 2.
- 3.5 Retention of FOIA Requests.** The FOIA Coordinator or Assistant FOIA Coordinator shall keep a copy of all the written requests for public records on file for no less than 1 year.

**3.6 Request for Non-paper Physical Media.** A person requesting public records may request that they be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. Such a request will be accommodated if the District has the technological capability necessary to provide records on the particular non-paper physical media stipulated in the particular instance. The charge for such a request will include the actual and most reasonable economic cost of the computer discs, computer tapes, or other digital or similar media required.

**Section 4: Responses to FOIA Requests**

**4.1 Response Within 5 Business Days.** Unless otherwise agreed to in writing by the person making the request, the District shall respond to a request for a public record within 5 business days after the District receives the request by doing 1 of the following:

- a. Granting the request.
- b. Issuing a written notice to the requesting person denying the request.
- c. Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- d. Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request.

**4.2 Provision of Webpage Address for District’s FOIA Policies and Written Public Summary.** In every response to a written request for public records, the District shall provide the specific webpage address(es) where the District’s FOIA Policies and the written public summary are available for public viewing.

**4.3 Failure to Timely Respond to Request.** Failure to respond to a request pursuant to Section 4.1 constitutes the District’s final determination to deny the request if either of the following applies:

- a. The failure was willful and intentional.
- b. The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy”, or a recognizable misspelling of such, or appropriate legal code reference for this act,

on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

**4.4 Requested Records Available on Website.**

- a. If a FOIA Coordinator or Assistant FOIA Coordinator knows or has reason to know that all or a portion of information requested in a written request is available on the District's website, the District will provide the specific webpage address where the information is available in its written response. The District will not charge a fee for records available to the public on its website, unless the requestor stipulates that the records be provided in a format other than through the publicly available website.
- b. If a verbal request for information is for information that the District believes is available on its website, the FOIA Coordinator or Assistant FOIA Coordinator shall, where practicable and to the best of his/her knowledge, inform the requestor about the District's pertinent website address.

**4.5 Denial of Request.** If a FOIA Coordinator or Assistant FOIA Coordinator determines that a request is for information exempt from disclosure under the FOIA, he/she shall issue a written denial of the request.

- a. The written notice shall contain:
  - i. An explanation of the basis under the FOIA or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

- ii. A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the District, if that is the reason for denying the request or a portion of the request.
  - iii. If all or part of a requested public record was determined exempt from disclosure under MCL 15.243, and therefore not disclosed pursuant to MCL 15.244, a description of that record or portion of a record that was separated and excluded.
  - iv. A full explanation of the requesting person's right to do either of the following:
    - 1. Submit to the Board a written appeal that specifically states the word "appeal" and identifies the reason(s) that the disclosure denial should be reversed. This procedure is described further below in Section 4.7.
    - 2. Seek judicial review of the denial, as discussed below in Section 4.8.
  - v. Notice of the right to receive attorneys' fees and damages as provided by statute if, after judicial review, the court determines that the District has not complied with the statute and orders disclosure of all or a portion of a public record.
- b. The individual responsible for the denial of the request shall sign the written notice of denial.

- c. The denial shall be made within 5 business days of receipt of the request or as otherwise provided by law, and shall include the reasons for the denial and the procedures for appeal of the decision to deny the request.
- d. Should the requested record(s) be classified as exempt but contain information which is not exempt from disclosure, the FOIA Coordinator or Assistant FOIA Coordinator shall delete the exempt material and release the remaining information for inspection or copying.

**4.6 Delays.** If the FOIA Coordinator or Assistant FOIA Coordinator determines that additional time is required to access the requested record(s) or to make a determination on whether the request will be granted, the Coordinator shall, within 5 business days of receiving the request, give written notice to the requestor that the District has extended the period for responding to the request by 10 business days. The District may then respond in any of the ways described in Section 4.1, above, except by issuing a notice extending the time to respond.

**4.7 Appeal within the District.** If a request to inspect or copy a record is denied by a FOIA Coordinator or Assistant FOIA Coordinator, the person making the request may appeal the decision to the Board. The appeal must be in writing, specifically state the word “appeal,” and identify the reason or reasons for reversal of the denial. The Board shall have 10 days to:

- a. Reverse the disclosure denial.
- b. Issue a written notice to the requesting person upholding the disclosure denial.
- c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

- d. Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Board shall respond to the written appeal. The Board shall not issue more than 1 notice of extension for a particular written appeal.

The Board is considered to have received a written appeal on the day of the first regularly scheduled meeting of the Board following the submission of the written appeal.

**4.8 Commence a Civil Action.** After an Assistant FOIA Coordinator or FOIA Coordinator makes a final determination to deny all or a portion of a FOIA request, or the Board affirms such a denial in an appeal, the requesting person may commence a civil action in the circuit court to compel the District's disclosure of the public records. Such an action must be filed within 180 days of the final determination or decision on appeal.

**Section 5: Public Access to Records, Original Records, Certified Copies**

- 5.1 Access to Records.** To ensure the safety and integrity of records, access to records shall be afforded only under the direct supervision of a FOIA Coordinator, Assistant FOIA Coordinator, or a designated District employee. Inspection of records by the public is limited to the regular office hours of the building or office which houses the records.
- 5.2 Original Records.** Original school records are not permitted to leave the premises except as required by law or Board policies.
- 5.3 Employees Prohibited from Giving or Selling Lists of School Records.** Employees are prohibited from giving or selling lists of any school records to any person except as authorized by law or Board policy.
- 5.4 Certified Copy of a Public Record.** Upon written request, the custodian of a public record shall furnish a requesting person with a certified copy of a public record.

**Section 6: Fees and Billing**

**6.1 Fee Calculations.** As permitted by MCL 15.234(1), the District shall charge a fee to cover the costs of responding to a FOIA request, except as provided in Section 6.2 below. The District's Standard FOIA Fee Form shall be used to determine the proper fee, which will be calculated by totaling the following costs:

- a. Labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request.
  - i. The District shall not charge a fee for such costs unless failure to charge a fee would result in unreasonable high costs to the District because of the nature of the request in the particular instance, and the District specifically identifies the nature of these unreasonably high costs.
  - ii. If a fee is charged in accordance with Section 6.1(a), the District shall not charge more than the hourly wage of the District's lowest-paid employee capable of searching for, locating, and examining the public records regardless of whether that person is available or who actually performs the labor.
  - iii. The District shall estimate and charge labor costs under Section 6.1(a) in increments of 15 minutes or more, with all partial time increments rounded down.
- b. Labor costs, including necessary review, associated with the separating and deleting of exempt information from nonexempt information.
  - i. The District shall not charge a fee for such costs unless failure to charge a fee would result in unreasonable high costs to the District because of the nature of

- the request in the particular instance, and the District specifically identifies the nature of these unreasonably high costs.
- ii. Generally, fees will not be charged under Section 6.1(b) unless the labor costs are more than \$50.00
  - iii. If a fee is charged in accordance with Section 6.1(b), the District shall not charge more than the hourly wage of the District's lowest-paid employee capable of separating and deleting exempt information from nonexempt information regardless of whether that person is available or who actually performs the labor.
  - iv. The District shall estimate and charge labor costs under Section 6.1(b) in increments of 15 minutes or more, with all partial time increments rounded down.
- c. For public records provided to the request on non-paper physical media, the actual and most reasonable economical cost of the computer discs, computer tapes, or other digital or similar media.
  - d. For paper copies, the actual total incremental cost of necessary duplication or publication, not including labor. At this time, the Board has determined this amount to be \$0.10 per copy. The fee under this section shall not exceed \$0.10 per sheet of paper for copies made on 8½ by 11-inch paper or 8½ by 14-inch paper.
  - e. Labor costs directly associated with duplication or publication, including making paper copies and digital copies.
    - i. The District shall not charge more than the hourly wage of the District's lowest-paid employee capable of necessary duplication nor publication,

regardless of whether that person is available or who actually performs the labor.

- ii. Labor costs will be estimated and charged in time increments of 15 minutes; however, all partial time increments will be rounded down.
- f. Actual cost of mailing, by the least expensive form of postal delivery confirmation
  - i. Unless requestor stipulates to expedited shipping or insurance.

## **6.2 Fee Reductions.**

### **a. Indigency.**

- i. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by an individual who receives public assistance or proves indigence, provided:
  - 1. The individual submits an affidavit stating –
    - a. he or she is indigent and receiving specific public assistance, or, if not receiving public assistance, the individual states facts showing inability to pay the cost because of indigency;
    - b. His or her request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
  - 2. The individual has not previously received discounted copies of public records from the District, pursuant to this policy, two times in the same calendar year.

- ii. If the requestor is ineligible for a discount based on indigency, the District shall inform the requestor specifically of the reason for ineligibility in the District's written response to the individual's FOIA request.
- b. **Public Interest.** The Board has determined that disclosure to the following person(s) and organizations is in the public interest. Consequently, the amount of fees charged to such individuals or organizations shall be reduced by not more than \$20.00 total each fiscal school year.
- i. A news media organization for dissemination to the public;
  - ii. A member of the Board;
  - iii. A minor whose request is for use in a school or community organization civics project (i.e., a Boy Scout Citizenship merit badge); and
  - iv. Other similar person(s) or organizations, as determined by the Board
- c. **Advocacy and Protection Organization.** A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities 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,<sup>1</sup> or their successors, if the request meets all of the following requirements:
- i. It is made directly on behalf of the organization or its clients.
  - ii. It 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.

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<sup>1</sup> The Michigan Protection & Advocacy Service, Inc. currently serves both of these functions.

- iii. It is accompanied by documentation of its designation by the state, if requested by the public body.
- d. All fee reductions discussed in Section 6.2(a), (b), and (c), shall be fully noted on the District's Standard FOIA Fee Form, which will be provided by the District in its response to an individual requesting records.
- e. The District shall keep a record of fees reduced for all individuals and organizations, though such fees will not be charged except those in excess of the yearly maximum.
- f. Revenue from fees paid for processing a FOIA request shall be deposited monthly in the general fund of the District.
- g. Section 6 does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

**Section 7: Deposits**

- 7.1 Good Faith Deposit.** If the estimated cost for processing an individual’s FOIA request exceeds \$50.00, the FOIA Coordinator or Assistant FOIA Coordinator shall require a good faith deposit of one-half of the estimated fee before processing the request.
- 7.2 Detailed Itemization Required.** The District’s request for a deposit shall include a detailed itemization, provided on the District’s Standard FOIA Fee Form, along with a best efforts estimate by the District regarding the time required for the District to provide the public records to the requestor.
- 7.3 Previous Failure to Pay.** If the District has granted and fulfilled a written request from an individual under the FOIA and has not been paid in full the total amount due pursuant to MCL 15.234(1), the District will require a deposit of up to 100% of the estimated fee before the District begins a full public record search for any subsequent written request from that individual, if all of the following apply:
- a. The final fee for the prior written request was not more than 105% of the estimated fee.
  - b. The public records made available contained the information being sought in the prior written request and the records are still in the District’s possession.
  - c. The public records were made available to the individual, subject to payment, within the time frame estimate described above in Paragraph 2 and required under MCL 15.234(7).
  - d. 90 days have passed since the District notified the individual in writing that the public records were available for pickup or mailing.
  - e. The individual is unable to show proof of prior payment to the District.

- f. The District calculates a detailed itemization, as required under MCL 15.234(4) that is the basis for the current written request's increased estimated fee deposit.

**7.4** The District shall not require an increased estimated fee deposit from an individual as described above in Section 7.3 if any of the following apply:

- a. The individual is able to show proof of prior payment in full to the District.
- b. The District is subsequently paid in full for the applicable prior written request.
- c. 365 days have passed since the individual made the written request for which full payment was not remitted to the District.

**Section 8: Miscellaneous**

**8.1 Public Availability of Policies and Written Public Summary.** The District shall make these FOIA policies (which include the District’s Standard FOIA Fee Form) and the District’s written public summary available to the public by:

- a. Posting the policies and public summary on the District’s website;
- b. Providing free copies of the policies and public summary, upon request, to visitors to the District’s office; and
- c. Including the specific webpage address(es) where the policies and written summary are available for public viewing in each District response to a written request for public records under the FOIA.

**8.2 New Software Purchased by District.** All new software purchased by the District to maintain records shall incorporate a feature enabling selected data to be exported in a text format for the purpose of complying with FOIA requests.