

VILLAGE OF LUTHER

FREEDOM OF INFORMATION ACT (FOIA) POLICY

This policy was established pursuant to Resolution Number 5-3-19, adopted by the Board of Trustees of the Village Of Luther on May 14, 2019. The policy identifies procedures that the village officers and employees are to follow when processing a request in accordance with Act No. 442 of the Public Acts of 1976, as amended.

SECTION 1: DEFINITIONS

Act: The Michigan Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.

Village: This includes the *Village of Luther* and its duly constituted departments, commissions, boards, or committees. The *Village* will be used interchangeably with public body as defined below.

FOIA Coordinator: The individual, designated by the *Village of Luther Board of Trustees*, who is responsible for accepting and processing requests for public records as outlined in this policy and the Act, and who is responsible for issuing approvals or denials of requests.

Person: An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity, as modified by the Act. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or in any other state, or in a federal correctional facility.

Public Body: The *Village of Luther* and its duly constituted departments, commissions, boards or committees.

Public Record: A writing which is prepared, owned, used in the possession of, or retained by a public body in the performance of an official function from the time it is created, as otherwise defined by the Act. Public record does not include computer software.

Unusual Circumstances: Circumstances entailing one or a combination of the following: the need to search for, collect, or appropriately examine or review a voluminous amount of public records pursuant to a single request, or the need to collect public records from numerous locations apart from the office receiving or processing the request.

Writing: Handwriting, typewriting, printing, photo stating, photographing, photocopying, and any other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. Writing shall also include email.

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

Where not otherwise defined, the words and phrases contained in this policy shall have the meaning given to them, if any, by the Act.

SECTION 2: RIGHT TO RECORDS

A person has the right to submit a written request for public record(s) from the *Village of Luther*. If a person is disabled and is unable to make a request in writing, the **FOIA Coordinator** shall make special accommodations. The request must sufficiently describe the public record to enable the **FOIA Coordinator** to identify the requested public record. A person has the right to inspect a public record, unless exempted by law or court order. Original public records are not to be

released from the Village's offices where the public records are secured. A person may request that copies of a public record be provided subject to the payment of fees outlined in Section 4. A person shall not receive copies of a public record unless payment is made at the time of delivery or pickup. Notwithstanding, the *Village* shall not refuse to process a written request of a public record if payment of a prior request has not been made. A person has the right to subscribe to future issuances of regularly published public records as outlined in Section 3 for a period of six months or less, which request may be renewed. Upon request, a person will be provided with a reasonable opportunity to examine the public records provided by the *Village* during the usual business hours. Persons with special needs should contact the **FOIA Coordinator** to insure the arrangements are prepared. A person has a right to obtain a certified copy of the public record. A person has a right to appeal the *Village's* decision as provided in Section 9 of this policy.

SECTION 3: RIGHTS AND OBLIGATIONS OF THE PUBLIC BODY

The **FOIA Coordinator** shall provide reasonable facilities and opportunities for person(s) to inspect public records. To implement this Section, the **FOIA Coordinator** may prepare and submit to the *Village of Luther* Board of Trustees for its approval rules to regulate the time and manner in which records are reviewed, to protect the records and to prevent excessive interference with the *Village's* normal operations, and to protect public records from loss, unauthorized alteration, mutilation, or destruction. The *Village* shall process all written requests for a public record. If a request has not been made in writing, the *Village* shall have the person complete the request form (see FOIA request form, Attachment A). Notwithstanding, the *Village* shall not deliver or make a public record available to the requesting person until payment is made. If the *Village* delivers or makes a public record available and the requesting person has not made payment at the time, the *Village* shall be entitled to collect from the requesting person the allowed cost of processing the request and any attorney fees and costs necessary for the collection if the person does not pay the cost within thirty (30) days of the public records being available or when they are sent by the *Village*. The **FOIA Coordinator** shall provide a certified copy of a public record if a person requests the same in writing. Neither the *Village* nor the **FOIA Coordinator** are obligated to create a new public record, or make a compilation, summary, or report information which does not already exist. This shall not apply to an already existing public record which must be separated under Section 6 of this policy. All public records shall be retained per the *Village's* approved Retention Schedule. Neither the *Village* nor the **FOIA Coordinator** is obligated to provide answers to oral or written questions. Unless a request requires that the *Village* provide copies to the person, the *Village* may allow for inspection of the public records. The **FOIA Coordinator** shall provide copies of any public records as provided for in the Act and shall retain a copy of all written requests on file for a period of not less than one (1) year. The **FOIA Coordinator** will follow the provisions of Section 4 of this policy.

SECTION 4: PROVISIONS FOR COPYING PUBLIC RECORDS

The *Village* shall adopt, by resolution, a schedule of fees for providing copies of public records. All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the *Village*, except any fees as otherwise provided by law. Postage and handling shall also be charged as applicable and shall include the exact postage, as well as the cost for envelopes or other containers used for mailing copies of the public records requested. The *Village* must use the most economical means available for making copies of public records. The **FOIA Coordinator** may waive a fee or reduce a fee if it is determined that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. The **FOIA Coordinator** may only charge a fee for the cost involved with searching for, examining, reviewing a public record, and the deletion and separation of exempt from nonexempt information when it results in an unreasonably high cost to the *Village*. In determining what an unreasonably high cost to the *Village* is, the **FOIA Coordinator** shall consider the following factors on a case-by-case basis:

- a) Volume of public record requested;
- b) Complexity of searching for, examining, reviewing a public record, and the deletion and separation of exempt from non-exempt information;
- c) The need to

search for, examine, and review public records from different departments, commissions, boards, or committees for the Village;

- d) The anticipated hours of labor;
- e) The available staffing for responding to the request; and
- f) Any other similar factors designated by the **FOIA Coordinator**.

Charges for labor costs shall be determined by using the hourly wages of the lowest paid public body employee capable of retrieving the records requested. The cost of labor includes the employee's salary, fringe benefits, and employment-related taxes. A public record search shall be made and a copy shall be furnished without the charge for the first \$20.00 of the fee for each request to any person who submits an affidavit stating that the person is then receiving public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigence. Where total fees and charges are reasonably anticipated to exceed Fifty Dollars (\$50.00) (see FOIA Worksheet, Attachment B), the **FOIA Coordinator** is further authorized to require that fifty percent of the estimated fees and charges be paid prior to the release of the public record copies. The **FOIA Coordinator** shall not charge additional fees for certification of any copies. The *Village* has limited in-house capabilities for copying photographs, audio or video tapes, microforms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site, the **FOIA Coordinator** will determine and assess those costs. If an employee of the public body is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at Village rates) will also be applied to the charges of the person(s) requesting the public records. The *Village* may hire third parties to process or assist in the processing of a request. Copy fees and mailing charges for future issuances of regularly published public records will be arranged through the **FOIA Coordinator**. A person can request that a public record, which is regularly published, be sent to them or they may be called for pick up of the public record for a period of time, not to exceed six months, unless extended (see Request for Future Issuance-Attachment C). The **FOIA Coordinator** must sign the request form to confirm that the public record is one that is regularly published.

SECTION 5: PROCEDURES OF THE PUBLIC BODY IN PROCESSING A FOIA REQUEST

Unless otherwise agreed to in writing by the person making the request, the *Village* shall respond to the request within five (5) business days after it receives the request by doing any of the following:

1. Granting the request

If the request indicates that the person desires to inspect the public records, the **FOIA Coordinator** will contact the person to arrange for inspection at a reasonable time and during the usual business hours. If the request indicates that the person wishes to have copies of a public record prepared and/or mailed and the anticipated fees and charges exceed \$50.00, the **FOIA Coordinator** may first mail a FOIA Worksheet to the person and request a fifty percent payment of the anticipated charges and fees. Upon receiving the person's executed FOIA Worksheet, where required, along with any payment due, the **FOIA Coordinator** will respond by providing those public records.

2. Issuing a written notice denying the request.

The notice of denial shall include:

- a) An explanation as to why the requested public record is exempt from disclosure in accordance with the Act, or
- b) A certificate that the requested public record does not exist under the name given by the person or another name reasonable known to the Village, or
- c) An explanation or general description of information which had to be separated or deleted from the public record pursuant to Section 6 of this policy.
- d) An explanation of the person's right to appeal (which states the "appeal") the denial to the *Village of Luther Council* and/or seek judicial review in accordance with the Act.

- e) An explanation of the person's right to reasonable attorney fees, costs, and disbursements as well as actual or compensatory, and punitive damages of \$500.00.
 - f) The **FOIA Coordinator** shall sign the notice of denial.
3. Granting the request in part, and issuing a written notice denying the request in part. In the latter instance, the public records exempted from disclosure should be treated as in 2 above.
 4. Issuing a written notice extending the time in which to respond to the request by ten (10) business days. Only one (1) written notice extending the response time is allowed. A written request made by facsimile, electronic mail, or other electronic transmission is not deemed to have been received by the **FOIA Coordinator** until one (1) business day after the facsimile, electronic mail, or other electronic transmission is made. If a person does not sufficiently describe a public record, the **FOIA Coordinator** shall notify the person that the request is deficient. The notice shall serve as a denial under Section 5 of this policy and the Act. The notice shall include the relevant language from Section 5. A subsequent written request is considered a new request and subject to the timelines described in this section.

SECTION 6: PROCEDURES FOR SEPARATION OF RECORDS

If a request is made for a public record that includes information which is exempt from disclosure under the Act and information which is not exempt, the **FOIA Coordinator** must separate the material and make the non-exempt material available for examination and/or copying. Additionally, the **FOIA Coordinator** is directed to generally describe the material which had to be separated, unless doing so would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

SECTION 7: DESIGNATION OF **FOIA COORDINATOR**

The *Village Clerk* is hereby designated to be the **Village's FOIA Coordinator**. In addition, the following officers shall be authorized to act as **FOIA Coordinator** designees: *Village Treasurer* and *Village President*. The **FOIA Coordinator** and designees shall be responsible to accept and process requests for public records and approve denials in accordance with the Act.

SECTION 8: APPEALS

In accordance with the Act, where a person's request for a public record is denied, in whole or in part, the person may file a written appeal to the decision in accordance with the following process:

1. The written appeal must specifically state the word "appeal" and identify the reason or reasons for the reversal of the denial.
2. The person shall be advised by the **FOIA Coordinator** of the right to file a written appeal the *Village President*.
3. The *Village President* shall take one of the following actions:
 - a) Reverse the disclosure denial.
 - b) Issue a written notice to requesting person affirming the disclosure denial.
 - c) Reverse the disclosure denial in part and issue a written notice to the requesting person affirming the denial in part.
 - d) Under unusual circumstances, issue a notice extending not more than ten (10) business days the period during which the *Village President* shall respond to the written appeal. Only one (1) written notice extending the response time is allowed.