

Village of Reese, Saginaw and Tuscola County, Michigan
Procedures, Guidelines, and Fees for FOIA Requests
(Attachment to Village of Reese Resolution 15-16-05)

1. Summary of Procedures and Guidelines

- a. This document shall serve as the written summary of Village of Reese’s FOIA procedures and guidelines. This document shall be posted on the Village of Reese’s website and a link to the website must be returned with every response to a FOIA request. A person may request a free paper copy of these procedures and guidelines at Village of Reese office.

2. FOIA Coordinator

- a. The FOIA Coordinator shall be the Village Manager. If the Village Manager is unavailable or unable to answer the request the alternate FOIA Coordinator shall be the Village’s Chief of Police or Administrative Assistant.

3. FOIA Request.

- a. **Form of Request.** A request must be made in writing and provided to the FOIA coordinator of the Village in person, by mail, fax, or email. A writing includes a completed Village FOIA Request Form, or a letter, fax, email or any other “writing.” A verbal request may be submitted, but it is proper for a Village employee to record the request on the Village’s FOIA request form.
- b. **What Can Be Requested.** A person may request to inspect, copy, or receive a copy of a public record. A request must sufficiently describe the public record so as to enable Village employees to identify and find the requested record. The Village is not obligated to create a new public record or make a compilation or summary of information which does not already exist.
- c. **Who May Request.** Anyone may request a public record; there are no residency requirements. However, prisoners in state, county, or federal correctional facilities are not entitled to make requests.
- d. **Time Period of Request.** A person may request to subscribe to future issues of public records that are created, issued, or disseminated by the Village on a regular basis. A subscription is valid for up to 6 months and can be renewed.
- e. **Receiving FOIA Request.**
 - i. A FOIA request is considered “received” for the purpose of determining the time for responding on the business day it is delivered by mail, in person, by hand, to the FOIA coordinator.
 - ii. A FOIA request received by facsimile, electronic mail, or other electronic submission is not “received” by the Village’s FOIA coordinator until one (1) business day after the electronic transmission is made. If the electronic mail is sent to the FOIA coordinators spam or junk-mail folder the request

is not “received” until 1 day after the FOIA coordinator becomes aware of the request. All Village employees must check their spam or junk-mail folder at least once weekly.

- iii. The FOIA request should be date stamped on the date it is received by the FOIA coordinator, and electronic request should be printed and date stamped. A log should be kept of all incoming FOIA requests.
- iv. The Village shall keep a copy of all written FOIA requests for public records received by the Village on file for a period of at least one year.

4. Timeline.

- i. **5 Business Days.** Not more than 5 business days after receiving a request, the Village must respond to a request for a public record. If no response is sent within 5 business days it may constitute a final denial.
- ii. **10 Business Days.** The Village can notify the requester in writing for an extension and extend the time for responding for an additional 10 business days.
- iii. **Appeals.** Within 10 business days of receiving an appeal the FOIA coordinator must respond or extend the time to respond 10 additional business days.

5. Responding to FOIA Request.

a. General.

- i. A response to a FOIA request shall be made on the attached FOIA Response Form.

b. Response Options.

- i. **Granted.** Use this response if all documents requested are included. Include a cover letter and copies of documents.
- ii. **Granted in part.** Use this response if only some documents requested are found or if some records requested are exempt. Include a cover letter explaining partial denial and copies of documents.
- iii. **Denied.** Use this response if no records are found to be applicable to the request or if all records applicable are exempt. A letter explaining reasons for denial must be sent to requestor.
- iv. **Deficient Request.** If a request does not sufficiently describe a public record, the FOIA Coordinator may either issue a Notice of Denial indicating the request is insufficient or seek clarification or amendment of the request by the requestor. Any clarification or amendment of the request by the person making the request will be considered a new request.

c. Written Notice of Denial Requirements.

- i. An explanation of the basis for denial giving the statute that exempts the record from disclosure, if the record is exempt.
- ii. A certificate from the Village stating the public record does not exist, if it does not.
- iii. A description of the public record or information that is separated or deleted, if any portion is separated or deleted.
- iv. A full explanation of the requester's right to: (1) submit a written appeal that specifically states the word "appeal" to the head of the Village which identifies the reasons for reversal, or (2) seek judicial review of the denial in Tuscola County Circuit Court within 180 days after the Village's final denial. If a person prevails in a court appeal they may be entitled to receive their attorney fees, costs, and disbursements, as well as actual compensatory damages, and punitive damages of \$1,000.00.
- v. The Notice of Denial shall be signed by the FOIA Coordinator.

d. Procedural Safeguards.

- i. Information that must be redacted: (1) social security numbers, (2) exempt information, pursuant to MCL 15.243(1)(a)-(y), (3) HIPAA protected information.

e. Form of Disclosure.

- i. A disclosure of public records can be made by providing paper copies or nonpaper physical media such as computer discs, computer tapes, or other digital or similar media.
- ii. The requestor may stipulate the public records be provided on nonpaper physical media, emailed, or otherwise electronically provided to him or her in lieu of paper copies, unless the Village lacks the technological capability to do so.

6. Fees

- a. **General.** A fee may be charged for actual incremental costs of copying, reproducing or delivering of a request for a public record. Labor costs associated with copying, reproducing, searching, locating, or redacting records may be charged if it would result in an unreasonably high cost to the Village. The Village may require that payment be made in full for allowable fees before the public record is made available to the requestor.
- b. **Copies.** The Village may charge the actual, incremental copying cost, for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. The fee for copies shall not exceed 10 cents per sheet of paper. The Village may also charge a fee for labor costs for reproducing or copying a record

if failure to charge a fee would result in unreasonably high cost to the Village. The Village may charge in any increment of time it chooses.

- c. **Nonpaper Physical Media.** The Village may charge the actual, incremental cost of the nonpaper physical media such as computer discs, computer tapes, or other digital or similar media.
- d. **Mailing.** The Village may charge the actual postage/shipping charges and actual cost of an envelope or mailer. The Village shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, and shall utilize the least expensive means of postal delivery confirmation.
- e. **Search and Separation Fees.** The Village may also charge a fee for labor costs for search, examination, and review where failure to charge a fee would result in unreasonably high costs to the Village. No fee shall be charged if the time takes less than 15 minutes. A fee may also be charged for labor costs to separate exempt information from public records if it would result in unreasonable high cost to the Village, but not if the time takes less than 15 minutes.
- f. **Labor Costs.** Where a labor fee is charged because it would result in unreasonably high cost to the Village, the rate shall be the lowest hourly wage for an employee capable of retrieving or copying the requested information. That employee would normally be an employee within the office or department which the subject records are located. Labor costs shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.
- g. **Contracted Labor Costs.** If the Village does not have an employee who is capable of separating and deleting exempt information, it may use contracted labor. The contracted labor fee shall be computed in the same manner as employee costs, in 15 minute increments, rounding down. The contracted labor hourly wage shall not exceed 6 times the state minimum wage.
- h. **Estimation of Fees and Prepayment.** The Village FOIA Coordinator shall provide a good faith estimate of costs for any disclosure anticipated to cost \$50.00 or more to prepare. A deposit of 50% of the estimated cost shall be required before the process of preparing a disclosure is initiated. Any overage paid to the Village shall be returned. Any additional balance due shall be paid to the Village before the disclosure will be made available to the requester. The time period to respond to a FOIA request shall be paused while the Village is awaiting its requested deposit.
- i. **Prepayment for Previous Requestor.** If the Village has not been paid in full for a previous FOIA request by a person, the Village may require 100% deposit on any subsequent request if: (1) final fee did not exceed 105% of estimated fee, (2) public records contained the information being sought and are still in the Village's possession, (3) records were made available within the required timeframe, (4) 90 days have passed since the records were ready for pickup, (5) the individual is unable to show proof of payment, (6) the Village provides an itemized estimate of current fees due.

- j. **Limitation on Fees.** The fee must be limited to actual duplication, mailing, and labor costs. The Village shall utilize the most economical means available for making copies of public records. Fees shall not apply to records covered by MCL 15.234(4).
- k. **Discount for Untimeliness.** Labor costs may be reduced by 5% for each day the Village exceeds the time permitted to respond to a request, with a maximum 50% reduction.
- l. **Waiver for Indigents.** The first \$20.00 of a fee shall be waived for a person who is on welfare or presents facts showing inability to pay because of indigency.
- m. **Waiver for Certain Nonprofits.** The first \$20.00 of a fee shall be waived for a nonprofit organization designated by the state to carry out activities under the Developmental Disabilities Assistance and Bill Of Rights Act or the Protection And Advocacy For Individuals With Mental Illness Act.
- n. **Limitation for Information Available on Website.** The Village shall not charge for information requested that is available on the Village's website. In this scenario, only a link to the website shall be given as a response to the FOIA request. If a person still requests paper copies of the information, a fee may be charged.

7. Appeals

- a. **Appeal of a Denial of a Public Record.** Freedom of Information Act, MCL 15.231-.246 provides for the following appeal rights:
 - i. **In General.** A person may appeal a denial of a public record to: 1) the Village President; the request must be in writing and state the word "appeal", or 2) the Tuscola County Circuit Court within 180 days after the Village's final determination to deny the request.
 - ii. **Appeal to Village.**
 - 1. The Village President shall respond within 10 business days after receiving the written appeal.
 - 2. The Village President may respond by (1) reversing the disclosure denial, (2) issuing a written notice upholding the disclosure denial, (3) reverse the disclosure denial in part and uphold it in part, or (4) in unusual circumstances issue a notice extending the time to respond for 10 additional business days.
 - iii. **Appeal to Circuit Court.**
 - 1. If a court that determines a public record is not exempt from disclosure, it shall order the Village to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record.
 - 2. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in full in such an action,

the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Village prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

3. If the court determines that the Village has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Village to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. 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 record as part of its public function.

b. Appeal of an Excessive FOIA Processing Fee.

- i. **In General.** If a requestor believes that the fee charged by the Village to process a FOIA request exceeds the amount permitted by state law, he or she must first appeal to the head of the Village by submitting an appeal for a reduction of fee. The appeal must be in writing and state the word "appeal" and identify how the required fee exceeds the amount permitted.

ii. Appeal to Village.

1. The Village President shall respond within 10 business days after receiving the written appeal.
2. The Village President may respond by (1) waiving the fee, (2) reducing the fee and issuing a written determination indicating the basis for the remaining fee, (3) upholding the fee and issuing a written determination indicating the basis for the fee, or (4) in unusual circumstances issue a notice extending the time to respond for 10 additional business days.
3. The Village's response must include a certification from the Village that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines along with FOIA.

iv. Appeal to Circuit Court.

1. Within 45 days after receiving notice of the Village Presidents determination of appeal the requesting person may commence a civil action in Tuscola County Circuit Court for a fee reduction.

2. If a court determines that the Village required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or FOIA, the court shall reduce the fee to a permissible amount.
3. 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.
4. If the court determines that the Village has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Village to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any 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 record as part of its public function.

VILLAGE OF REESE, SAGINAW AND TUSCOLA COUNTY, MICHIGAN FOIA REQUEST FEE WORKSHEET

Cost may only be charged if a copy of a public record is requested. No fee may be charged for an individual to simply review public records.

Date request received: _____ Date of Response: _____

Record(s) requested: _____

I. Duplication Costs

Copy Cost:

$$\frac{\text{_____}}{\text{Cost per copy}} \times \frac{\text{_____}}{\text{Number of copies}} = \frac{\text{_____}}{\text{Total copy cost}}$$

Nonpaper Physical Media / Electronic Record Cost:

$$\frac{\text{_____}}{\text{Cost per CD}} \times \frac{\text{_____}}{\text{Number of disks}} = \frac{\text{_____}}{\text{Total disk cost}}$$

$$\frac{\text{_____}}{\text{Cost per other electronic media}} \times \frac{\text{_____}}{\text{Number}} = \frac{\text{_____}}{\text{Total other electronic cost}}$$

II. Mailing Cost:

$$\frac{\text{_____}}{\text{Cost per envelope}} \times \frac{\text{_____}}{\text{Number of envelopes}} = \frac{\text{_____}}{\text{Total envelope cost}}$$

Plus Postage:

- U.S. Mail
- Fed Ex
- DHL
- Other: _____

$$+ \frac{\text{_____}}{\text{Total Postage Cost}}$$

$$= \frac{\text{_____}}{\text{Total Mailing Cost}}$$

III. Labor Cost:

Copy or Reproduction Labor

$$\frac{\text{_____}}{\text{Hourly labor rate}} \times \frac{\text{_____}}{\text{Fringe benefit multiplier}} \times \frac{\text{_____}}{\text{Number of hours}} = \frac{\text{_____}}{\text{Total labor cost}}$$

Search and Separation Labor

$$\frac{\text{_____}}{\text{Hourly labor rate}} \times \frac{\text{_____}}{\text{Fringe benefit multiplier}} \times \frac{\text{_____}}{\text{Number of hours (15 min. increment)}} = \frac{\text{_____}}{\text{Total labor cost}}$$

Contracted Labor

$$\frac{\text{_____}}{\text{Hourly labor rate (limit is 6x min. wage)}} \times \frac{\text{_____}}{\text{Fringe benefit multiplier}} \times \frac{\text{_____}}{\text{Number of hours}} = \frac{\text{_____}}{\text{Total labor cost}}$$

IV. Total Charges

$$\frac{\text{_____}}{\text{Duplication costs}} + \frac{\text{_____}}{\text{Mailing costs}} + \frac{\text{_____}}{\text{Labor costs}} = \frac{\text{_____}}{\text{Total}}$$

**VILLAGE OF REESE, SAGINAW AND TUSCOLA COUNTY, MICHIGAN
FOIA REQUEST FORM**

Date: _____

Requested by: _____

Name

Address

City, State

Phone: _____

Method of Request: Mail In-Person Fax E-Mail Oral

Description of Requested Information (be as specific as possible): _____

Method of Delivery: Paper Copies (please mail) Paper Copies (will pick-up) E-Mail
On-Site Record Inspection Other: _____

Who Received Request: _____

Date Received: _____ **Effective business date of receipt:** _____

Manager's Signature: _____

PLEASE FORWARD TO VILLAGE MANAGER IMMEDIATELY

**VILLAGE OF REESE, SAGINAW AND TUSCOLA COUNTY, MICHIGAN
FOIA RESPONSE FORM**

Village of Reese’s procedures, guidelines, and fees for FOIA requests are maintained on the Village’s website, at the following link: <http://villageofreese.net/Pages/default.aspx>

Response to FOIA Request:

1. Granted.

2. Granted in part. Explanation for partial denial:

3. Denied. Explanation of denial:

4. Deficient Request. Explanation:

If your FOIA request was denied in whole or in part you have the following appeal rights:

- (1) Submit a written appeal that specifically states the word “appeal” to the Village President which identifies the reasons for reversal.
- (2) Seek judicial review of the denial in Tuscola County Circuit Court within 180 days after the Village’s final denial. If a person prevails in a court appeal they may be entitled to receive their attorney fees, costs, and disbursements, as well as actual compensatory damages, and punitive damages of \$1,000.00.

VILLAGE MANAGER SIGNATURE: _____