

# **MICHIGAN FREEDOM OF INFORMATION ACT (FOIA)**

## **Linden Community Schools Procedures and Guidelines**

The Freedom of Information Act (Act 442 of the Public Acts of 1976) regulates and sets requirements for the disclosure of public records by all public bodies in the state. These Procedures and Guidelines inform individuals of Linden Community Schools' guidelines for obtaining information under the FOIA.

### **KEY DEFINITIONS**

FOIA Coordinator is an individual designated by Linden Community Schools in accordance with the Act to accept and process requests for public records. For the purpose of these procedures and guidelines, the Superintendent of Linden Community Schools hereby designates the Executive Assistant to the Superintendent as the FOIA Coordinator with the authority and responsibilities stated in the Act. The FOIA Coordinator shall be responsible to accept and process all written requests for public records and shall also be responsible for approving a denial under the Act.

Person means 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 any correctional facility in the U.S.

Public Body includes state officers, employees, agencies, departments, divisions, bureaus boards, commissions, councils, school Linden Community Schools, and community colleges as well as any other body which is created by state or local authority or which is primarily funded by or through state or local authority. "Public body" does not include private non-profit corporations.

Public Record is defined as writings prepared, owned, used by or in the possession of or detained by Linden Community Schools in the performance of an official function, from the time it is created. Public record does not include computer software. The FOIA does not require Linden Community Schools to create a compilation, summary, or report of information or to create a new public record. A person's correspondence requesting information under the FOIA is itself considered a public record.

Unusual Circumstances means any one or combination of the following, but only to the extent necessary for the proper processing of a request:

- The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
- The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

Writing means handwriting, typewriting, printing, photographing, photocopying, and every 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.

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

## **COVERAGE**

The FOIA sets requirements for the disclosure of public records by all public bodies in the state. In general, all records, except those specifically cited as exceptions, are covered by the FOIA. The records covered include minutes of open meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered. It does not matter what form the record is in.

Upon receiving a written request for a public record pursuant to these procedures and guidelines, any person has the right to inspect, copy, or receive copies of the requested public records, unless the requested public record is exempt from disclosure pursuant to the Act. The request must be in writing, and must sufficiently describe the public record to allow Linden Community Schools to identify and locate the public record. A person may also subscribe to public records issued or created by Linden Community Schools on a regular basis, and such subscriptions may be valid up to six months. However, if a request pertains to materials referred to in the Open Meetings Act of 1976, the subscription is valid for one year.

If a requested public record may be obtained on Linden Community Schools' website, the FOIA Coordinator shall notify the requestor in writing of such availability and provide the direct Internet address or link to obtain such public record. If, after receiving such written notification, the requestor notifies Linden Community Schools that he or she continues to want Linden Community Schools to provide a copy of the available public record, in any format, Linden Community Schools shall process such request and may impose additional labor costs as specified in the Fees section below.

Upon request for public inspection, Linden Community Schools will provide reasonable facilities so that requesting persons may examine and take notes from public records. The facilities will be made available for use during Linden Community Schools' regular business hours. Linden Community Schools is obligated to take appropriate steps to safeguard original public records while being reviewed.

Linden Community Schools may provide information without a written request. If the request is verbal, and the information is readily available on the website, the FOIA Coordinator shall inform the requestor where to find the information.

## **TIMELINES**

A FOIA request made by facsimile, electronic mail, or other electronic transmission is not received until one (1) business day after the electronic transmission is made. If the request is sent by email and is automatically delivered to a spam or junk-mail folder, the request is not received until one (1) day after discovering the request. The time the emailed request is delivered to the spam/junk-mail folder and the time Linden Community Schools becomes aware of the request will both be noted in its written response.

When Linden Community Schools receives a written request for a public record, the FOIA Coordinator will provide a written response that includes a detailed itemization of the calculated fees and deposit costs for Linden Community Schools to provide the documents. Linden Community Schools will respond to FOIA requests within five (5) business days after the request is received, unless the five-day period is waived by the requesting party, by one of the following:

- a) Grant the request.
- b) Issue a written notice to the requestor denying the request, including the reasons for the denial.
- c) Grant the request in part, and issue a written notice to the requestor denying the request in part.
- d) Notify the requester in writing and extend the time for an additional ten (10) business days setting forth the reasons for the extension as well as a detailed itemization of the total estimated fee. Linden Community Schools shall not issue more than one (1) notice of extension for a particular request.

Upon receipt by Linden Community Schools of the total amount due, the FOIA Coordinator will provide the requested documents.

A failure to respond to a request constitutes a final decision to deny the request which may, among other things, form the basis for a Court suit to force disclosure.

## **FEES**

The Michigan FOIA allows for Linden Community Schools to charge fees in connection with requests made for public records, except as noted or as provided for otherwise in the FOIA.

A fee will be charged for a public record search, copying for inspection, or for providing a copy of a public record. Fees include the cost of search, examination, review, separation, and deletion of exempt from nonexempt information, mailing costs, and incremental cost of duplication or publication including labor, as provided for in the FOIA.

The cost of search, examination, review, separation, and deletion of exempt from nonexempt information may also be charged if the failure to do so will result in unreasonably high costs to Linden Community Schools because of the nature of the request in a particular instance. If such is the case, Linden Community Schools shall specifically identify the nature of these unreasonably high costs.

The cost for time spent on a public record search, on duplicating public records by means other than photocopying, on examining and reviewing public records, on separating exempt from nonexempt information, and on redacting exempt information from public records shall be calculated using the wage of the lowest paid Linden Community Schools employee capable of searching for, locating, and examining the requested public records. Labor costs shall be charged in increments of at least 15 minutes with all partial time increments rounded down. Linden Community Schools may also add up to 50% of fringe benefit costs to the applicable labor charge amount and will be clearly noted in the detailed itemization form. Subject to the 50% limitation, Linden Community Schools shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits.

Notwithstanding the foregoing, 100% of fringe benefit costs may be added to the applicable labor charge if the requestor is notified in writing that the public records requested are readily available on Linden Community Schools' website and the requestor continues to request that Linden Community Schools provide a physical copy of said record.

Overtime wages shall not be included in the calculation of labor costs unless the requestor specifically approves the use of overtime in writing, and overtime wages are clearly noted in the detailed itemization form.

If Linden Community Schools does not employ a person in-house who is capable of separating exempt from non-exempt information in a particular instance, as determined by the FOIA Coordinator, it may utilize an outside contractor. In those instances, Linden Community Schools shall clearly note the name of the person or firm hired on the detailed itemization form. The cost of the contractor's labor, including necessary review directly associated with separating and deleting exempt information from non-exempt information, shall not exceed an amount equal to six (6) times the minimum hourly wage rate as set by state law.

Linden Community Schools will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

The cost for time spent photocopying documents shall be billed at the hourly wage of the lowest paid full-time clerical employee of Linden Community Schools. A requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. Notwithstanding the foregoing, such stipulation must be within the technological capabilities of Linden Community Schools. A fee will be incurred for the most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media requested.

Fees for responding to any request shall include duplication (copying) costs and mailing costs. Duplication (copying) costs shall be set from time to time by resolution of the Superintendent in an amount that does not exceed 10 cents per page (8½ x 11 and 8½ x 14). Linden Community Schools shall use the most economical method of duplication (i.e., double-siding, etc.).

Linden Community Schools shall charge the actual costs of mailing via first class mail unless it is determined that such costs are extremely minimal, such as the cost of a postage stamp for a one ounce letter mailed through the U.S. Postal system. If the copies of the public records to be sent to the requester exceed first-class mail weight limits, those copies will be shipped via U.S. Parcel Post (or by another commercial carrier at similar rates), and the actual cost of shipping will be billed to the requester. If the requestor asks that the records be shipped or delivered via any other method, the requestor will pay for all costs of the delivery method requested.

Linden Community Schools will seek a good faith deposit before undertaking the work necessary to respond to a FOIA request if, in the FOIA Coordinator's judgment, based upon a preliminary review of said request in consultation with the departments/programs that will

provide the relevant public records, the total fee to be charged is estimated to exceed \$50.00. The deposit shall not exceed half of the total fee projected. If Linden Community Schools requires a deposit, it will not process the request until the deposit is paid.

A request for a good faith deposit shall include a detailed itemization of the total estimated fee as well as a best-efforts estimate regarding the time frame it will take to provide the public records to the requestor. Linden Community Schools may require a one-hundred percent (100%) deposit from a requestor who has not previously paid a fulfilled FOIA request, provided the requirements in the Act are met.

All other fees for responding to a FOIA request will be billed when Linden Community Schools responds to the FOIA request. An itemized invoice will be provided by Linden Community Schools with the written response. Linden Community Schools reserves the right to require payment in full of all fees incurred in processing a FOIA request before delivering copies of the responsive documents.

### **FEE REDUCTION OR WAIVER**

A public record search may be conducted and copies furnished without charge or at a reduced charge 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.

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 the following exemptions:

- a) A requestor who is entitled to information under the FOIA and who submits an affidavit stating that the requestor has an inability to pay the cost because of indigence. (This caveat shall not apply if the requestor has received discounted copies of public records from Linden Community Schools twice during the calendar year; or the individual requests information in conjunction with outside parties who are offering or providing payment, or other remuneration to the individual to make the request.)
- b) A non-profit operating under the Developmental Disabilities Assistance Act, and the Protection and Advocacy for Individuals with Mental Illness Act:
  - i. Made on behalf of the organization or its clients.
  - ii. Made for a reason consistent with protecting and advocating for the rights of developmentally disabled and mentally ill persons.
  - iii. Provides documentation of its designation by the state.

### **DENIALS**

The FOIA Coordinator is responsible for the denial of the request and shall sign the written notice of denial.

A written notice denying a request in whole or in part shall contain:

- a) An explanation of the reason for the determination that the public record, or portion of that public record, is exempt from disclosure.
- b) A statement that the public record does not exist under the name given by the requester or by another name reasonable known to Linden Community Schools.

- c) A description of a public record or information on a public record that is separated or deleted pursuant to the Act, if separation or deletion is made.
- d) An explanation of the requestor's right to do either of the following:
  - iv. Submit to the Linden Community Schools Board of Education a written appeal that specifically states the word "appeal" and identifies the reasons for reversal of the disclosure denial.
  - v. Seek judicial review of the denial under the Act.
- e) Notice of the right to receive attorneys' fees and damages as provided under the Act if, after judicial review, the Court determines that Linden Community Schools has not complied with this section and orders disclosure of all or a portion of a public record.

Pursuant to the Act, Linden Community Schools may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. Therefore, it is the policy of the Linden Community Schools that FOIA requests that create or result in an excessive and unreasonable interference with the discharge of Linden Community Schools functions will be denied.

#### **RIGHT TO APPEAL A DENIAL**

If a requestor desires to appeal a denial of a request for a public record, in whole or in part, the requestor may submit a written appeal to Linden Community Schools' Board of Education or may seek judicial review of the denial, pursuant to the Act. A written appeal to the Board of Education shall specifically state the word "appeal" and identify the reasons for reversal of the denial.

Within ten (10) business days after receiving a written appeal, the Board of Education shall do one of the following:

- a) Reverse the disclosure denial.
- b) Issue a written notice to the appellant upholding the denial.
- c) Reverse the denial in part and issue a written notice to the appellant upholding the denial in part.
- d) Under unusual circumstances, issue a notice extending, for not more than ten (10) business days, the period during which the Board of Education shall respond to the written appeal. The Board of Education shall not issue more than one (1) notice of extension for a particular written appeal.

The Board of Education is not considered to have received a written appeal until its next regularly scheduled meeting after the appeal is submitted.

Any failure to respond to an appeal shall be considered a decision to uphold the denial. If an appeal is denied in whole or in part by the Board of Education, the appellant may seek judicial review of the nondisclosure by commencing an action in Genesee County Circuit Court.

#### **RIGHT TO APPEAL A FEE**

If the requestor believes the fee estimated or charged for the request exceeds the amount permitted under these procedures and guidelines or under the Act, the requestor is required to submit to the Linden Community Schools Board of Education a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under these procedures and guidelines or the Act.

Within ten (10) business days after receiving a written appeal, the Board of Education shall do one of the following:

- a) Waive the fee.
- b) Reduce the fee and issue a written determination to the requestor indicating the specific basis under the Act that supports the remaining fee. The determination shall include a certification from the Board of Education that the statements in the determination are accurate and that the reduced fee complies with these procedures and guidelines and the Act.
- c) Uphold the fee and issue a written determination to the requestor indicating the specific basis under the Act that supports the required fee. The determination shall include a certification from the Board of Education that the statements in the determination are accurate and that the fee complies with these procedures and guidelines and the Act.
- d) Issue a notice extending, for not more than ten (10) business days, the period during which the Board of Education shall respond to the written appeal. The notice of extension shall include a detailed reason why the extension is necessary. The Board of Education shall not issue more than one (1) notice of extension for a particular written appeal.

If a requestor disagrees with the Board of Education's determination, the requestor may commence an action in Court within 45 days of Linden Community Schools' determination, to seek a fee reduction. If a civil action is commenced against Linden Community Schools under this provision, Linden Community Schools is not obligated to complete the processing of the request until the Court resolves the fee dispute.

## **ENFORCEMENT**

Court-ordered disclosure may be commenced in the Genesee County Circuit Court. The burden is on the Linden Community Schools to sustain its denial. In addition to obtaining a Court Order requiring disclosure, a complainant who prevails in whole or part shall be awarded reasonable attorney's fees plus costs.

If the Court determines that the agency has been arbitrary and capricious in refusing or delaying disclosure of a record, the Court shall order Linden Community Schools to pay a civil fine of \$1,000 paid into the state treasury. The Court shall also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000 to the requestor. These damages are not assessable against individuals but rather are applicable to Linden Community Schools. If the Court determines that Linden Community Schools willfully and intentionally failed to comply with this Act or otherwise acted in bad faith, the Court shall order Linden Community Schools to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence, deposited into the state treasury.

If the Court determines that the agency has been arbitrary and capricious by charging an excessive fee, the Court shall order Linden Community Schools to pay a civil fine of \$500 paid into the state treasury. The Court shall also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500 to the requestor. These damages are not assessable against individuals but rather are applicable to Linden Community Schools.

## **EXEMPTIONS**

Several types of records are exempt from disclosure. Many of those exemptions pertain to law enforcement investigations, custodial and penal institutions, and so forth. Those exemptions that may be applicable to Linden Community Schools include the following, all of which are subject to the interpretation of Michigan courts:

- Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- Records or information specifically described and exempted from disclosure by statute.
- A public record or information that is furnished by the public body which originally compiled, prepared, or received the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body. However, the considerations originally giving rise to the exempt nature of the public record must be applicable.
- Information or records subject to the attorney-client privilege.
- Information or records subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner, or other privilege recognized by statute or court rule.
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or in a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.
- Appraisals of real property to be acquired by the public body until (a) an agreement is entered into; or (b) three (3) years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment or academic examination, unless the public interest in disclosure under the Act outweighs the public interest in nondisclosure.
- Medical, counseling, or psychological evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.
- Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in a particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
- Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.
- Records of a campaign committee including a committee that receives money from a state campaign fund.
- Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code of 1978, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following: (a) The fact that an allegation has been received and an investigation is being conducted, and

the date the allegation was received; or (b) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

- Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- Records or information relating to a civil action in which the requesting party and the public body are parties.
- Information or records that would disclose the social security number of an individual.
- Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code of 1931, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.
- Information that, if released, would prevent the public body from complying with the Family Educational Rights and Privacy Act of 1974. A public body that is a local or intermediate school Linden Community Schools or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school Linden Community Schools or a public school academy may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing directory information, a public body that is a local or intermediate school Linden Community Schools or a public school academy may require the requestor to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.