

BATTLE CREEK HOUSING COMMISSION
Freedom of Information Act (FOIA) Policies and Procedures

Resolution 2015-7

WHEREAS, from time to time, BCHC will receive Freedom of Information Act (“FOIA”) requests; and

WHEREAS, these FOIA requests must be responded to in adherence with the Freedom of Information Act, being MCL 15.231, *et seq* (the “Act”); and

WHEREAS, due to the necessity of having a policy to ensure that FOIA requests are addressed in an efficient and consistent manner and pursuant to established published procedures and guidelines to implement charges for responding to FOIA requests; and

WHEREAS, there were significant changes in the FOIA procedures and requirements adopted pursuant to 2014 PA 563, to be effective July 1, 2015.

NOW, THEREFORE, BE IT RESOLVED, that the Battle Creek Housing Commission hereby adopts the following Freedom of Information Act Policies, Procedures, and Guidelines:

1. The Executive Director is hereby designated the FOIA Coordinator for BCHC and is responsible for accepting and processing all FOIA requests in accordance with these Policies, Procedures, and Guidelines. The Executive Director will designate staff in his or her absence to fulfill the responsibilities of the FOIA Coordinator.
2. Each FOIA request shall promptly be forwarded to the FOIA Coordinator. BCHC shall provide the requested information unless a determination is made that it is exempt from disclosure. If the record contains both exempt and non-exempt material, the non-exempt material shall, if possible, be separated and made available. The FOIA Coordinator shall sign and provide the final response to the requester.
 - (a) The Act requires that requests for public records be made in writing. A FOIA Request Form shall be available on BCHC’s website at www.battlecreekhousing.org for use by the public. For a request to be considered a sufficient writing to satisfy the Act, it must contain the following:
 - (i) Indication that it is a FOIA request.
 - (ii) Name, address, telephone number and email (if applicable) of requester (if no mailing address, a statement that requester will return to receive response.)

- (iii) Request must sufficiently describe a public record so as to enable BCHC personnel to identify and find the requested public record.
 - (iv) Statement that requester will pay the costs allowable under the Act or documentation showing that the requester is receiving public assistance or other facts showing inability to pay due to indigence.
 - (b) The Act only addresses the release of public records that exist at the time of the request.
 - (i) BCHC is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other BCHC staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.
 - (ii) A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis (for example, board minutes or agendas). Subscription requests are valid for up to six months at the request of the subscriber and can be renewed. A subscription fee schedule shall be generated by the FOIA Coordinator, taking into account the medium, volume, and frequency.
 - (c) A person may ask to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request. However, prisoners in state, county or federal correctional facilities are not entitled to make requests.
 - (d) The FOIA Coordinator shall maintain a chronological file of all FOIA requests processed by him or her, together with a copy of the response letter. The FOIA Coordinator shall maintain the records related to requests processed for one year plus one day.
 - (e) Some public record requests are governed by other statutes. Public records that would disclose the social security number of any individual will not be made available. Information of a personal nature is exempt from disclosure if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. The FOIA Coordinator may contact an attorney to verify compliance when necessary or appropriate.
- 3. Unless otherwise agreed to in writing by the person making the request, the FOIA Coordinator shall respond to the request not more than five (5) business days after the

request has been received, unless a 10 business day extension has been issued on the first “due date”, in which case the FOIA Coordinator shall respond within 15 business days after the request has been received.

- (a) 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.
 - (b) If a request is sent by email, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the BCHC folder and the date the FOIA Coordinator became aware of the request.
4. The response shall either grant the request, deny the request, or grant the request in part and deny the request in part.
5. If the request is granted in whole or in part, the response shall:
- (a) State the fees, if any, for the public record search, for the necessary copying of a public record for inspection, or for providing a copy of the public record. The fees shall be charged in accordance with the Act and only those set forth in the Detailed Cost Itemization Form, which is incorporated herein.
 - (i) Payment for copies and/or administrative charges will be due at the time copies are released to the requester.
 - (ii) BCHC will require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or prior to making copies in excess of 250 pages.
 - (iii) If the FOIA Coordinator has failed to respond within the time frames set forth in Paragraph 3 and either the delay was willful and intentional or the request was properly identified as a FOIA request pursuant to Section 4(9)(a)(ii) of the Act, the charges for labor costs set forth in this resolution and the attachments shall be reduced by 5% for each day BCHC exceeded the time for a response, with a maximum of a 50% reduction.
 - (b) State the amount of any deposit required pursuant to the terms of this resolution and the Act. Where total fees and charges are reasonably anticipated to exceed \$50.00, BCHC requires that 50% of the estimated fees and charges be paid in advance of the performance of the work authorized by the Act. The balance must be paid prior to release of documents.

- (c) Contain a best efforts estimate setting forth the time frame it will take the FOIA Coordinator to comply with the request.
 - (d) Explain which, if any, of the requested documents or information is available on BCHC's website, including BCHC web page address and location on the website where the information can be located. The FOIA Coordinator shall identify separately in the Detailed Cost Itemization Form the charges to receive copies of those documents that are available on BCHC's website.
 - (e) Fully explain the right to file a "fee appeal" to the Commission Board or commence an action in circuit court if fees are charged in excess of the amount permitted by the Act or these policies and procedures, including the possibility of being awarded all or a portion of the requesting person's attorney fees if the court reduces the fees by 50% or more of the total fee.
 - (f) Include a website link to these policies, procedures and guidelines on BCHC's website.
 - (g) Include a signature of the FOIA Coordinator.
8. If the request is denied in whole or in part, the response shall:
- (a) Explain the statutory basis for the determination that the public record, or a part thereof, is exempt, if that is the reason for denying all or part of the request.
 - (b) Certify that the public record does not exist under the name given by the requester or any other name reasonably known to BCHC, if that is the reason for denying all or part of the request.
 - (c) Describe any material that has been separated or deleted as required by the Act.
 - (d) Fully explain the requesting person's right to appeal to the Commission Board or seek judicial review of the denial in circuit court, including the right to receive attorney fees if the court determines that BCHC has not complied with the Act and orders disclosure of all or a portion of the public record.
 - (e) Include a website link to these policies, procedures and guidelines on BCHC's website.
 - (f) Include a signature of the FOIA Coordinator.
9. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the FOIA Coordinator determines 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 benefitting the general public. In addition, 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 either of the following:

- (a) An individual who is entitled to information under this Act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigence. If the requester is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsections “Discount: Indigence” and “Discount: Nonprofit Organization” on page 5 of the Detailed Cost Itemization Form. If a requester is ineligible for the discount, the FOIA Coordinator shall inform the requester specifically of the reason for ineligibility in the written response. An individual is ineligible for this fee reduction if any of the following apply:
 - (i) The individual has previously received discounted copies of public records under this subsection from the same public body twice during that calendar year.
 - (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The FOIA Coordinator may require a statement by the requester in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
- (b) A nonprofit organization formally designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance 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, or their successors, if the request meets all of the following requirements:
 - (i) Is made directly on behalf of the organization or its clients.
 - (ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, being MCL 330.1931.
 - (iii) Is accompanied by documentation of its designation by the State, if requested by the public body.

10. Fees for the cost of search, examination, review, and the deletion and separation of exempt from non-exempt information shall not be charged unless failure to charge a fee would result in unreasonably high costs to BCHC because of the nature of the request in the particular instance and BCHC specifically identifies the nature of these unreasonably high costs. The costs to BCHC shall be deemed unreasonably high if, because of the nature of the request in the particular instance, the amount of time needed to complete the search, examination, and review, or the deletion and separation of exempt from non-exempt information, will exceed 15 minutes.
11. If a BCHC employee receives a verbal request for information that the employee believes is available on BCHC's website, the employee shall, where practicable, to the best of the employee's knowledge, inform the requester about BCHC's website address. Verbal requests for generally distributed public records should be honored. The BCHC employee shall otherwise inform the requester of the ability to file a written FOIA request with BCHC.
12. The FOIA Coordinator shall require a good-faith deposit from the requester of one half (1/2) of the total estimated fee before providing public records if the entire fee estimate or charge, as detailed on the form attached hereto as Attachment B, exceeds \$50.00. The FOIA Coordinator shall require a deposit of 100% of the estimated fee if the requester is more than 90 days and less than 365 days delinquent in paying the fees for and receiving records from a prior request and 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 request and are still in BCHC's possession.
 - (c) The public records were made available to the individual, subject to payment, within the time frame estimate provided to the individual.
 - (d) Ninety days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing.
 - (e) The individual is unable to show proof of payment.
 - (f) The fees for the current request are itemized pursuant to the Detailed Cost Itemization Form.
 - (g) The individual does not subsequently pay in full the applicable fees for the prior request.

13. The Commission Board is designated the head of BCHC for purposes of all appeals made pursuant to the Act. The following appeals, together or independently, may be made to the Commission Board. The Commission Board is not considered to have received a written appeal until the first regularly scheduled Commission Board meeting following submission of the written appeal.
 - (a) Fee appeals. A person may appeal the fee by submitting to the Commission Board a written appeal for a fee reduction by specifically stating the word “appeal” and identifying how the required fee exceeds the amount permitted under these policies and procedures or the Act.
 - (b) Denial appeals. A person may appeal the denial of FOIA request, whether said denial was in whole or in part, by submitting to the Commission Board a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the disclosure denial.
 - (c) Under unusual circumstances, if a response to a FOIA appeal cannot be completed within the statutory ten calendar days after the appeal is received, the FOIA Coordinator will prepare an extension letter, describing the basis for the need for the extension. Only one extension is allowed under the statute for a particular written appeal and it may not be for more than ten business days, unless otherwise agreed to by the requester in writing.
14. BCHC shall create a written public summary, in a manner so as to be easily understood by the general public, of the policies, procedures, and guidelines contained herein that are relevant to the general public regarding how to submit written requests to BCHC and explaining how to understand BCHC’s responses, deposit requirements, fee calculations, and avenues for challenge and appeal.
15. These policies, procedures, and guidelines, along with the written summary described above, shall be posted on BCHC’s website at www.battlecreekhousing.org, so a link to those documents will be provided in lieu of providing paper copies of those documents.
16. The FOIA Coordinator designated herein, the Executive Director and all BCHC employees shall, at all times, comply with the Act. To the extent there is a conflict between the Act and the policies, procedures, and guidelines specified herein, the Act controls and shall be followed. To the extent there is an omission of any requirement of the Act and the policies, procedures, and guidelines specified herein, the requirements of the Act control and must be complied with.
17. Appendix of BCHC FOIA Forms
 - Request for Public Records Form

- Notice to Extend Response Time Form
- Notice of Denial Form
- Detailed Cost Itemization Form
- Appeal of Denial of Records Form
- Appeal of excess Fee Form

BE IT FURTHER RESOLVED, that the Board of the Battle Creek Housing Commission hereby authorizes the adoption of this Freedom of Information Act Policies and Procedures to be effective July 1, 2015.

Vote Ayes-Unanimous
Nays-

Date: June 24, 2015