

# VILLAGE OF BANCROFT

RESOLUTION NO. 2015-1

(Enacted June 10, 2015)

## **RESOLUTION ESTABLISHING PROCEDURES AND GUIDELINES TO IMPLEMENT THE MICHIGAN FREEDOM OF INFORMATION ACT**

WHEREAS, the State of Michigan has amended the Michigan Freedom of Information Act, being Act 442 of 1976, Michigan Compiled Law 15.231 et al, the Village of Bancroft in accordance with that Act hereby establishes the following procedures and guidelines in order to implement the Michigan Freedom of Information Act:

### Article I: Definitions:

- A. "Act" means The Michigan Freedom of Information Act, M.C.L. 15.231 et al.
- B. "FOIA Coordinator" means the Village Clerk who is responsible for accepting and processing requests for public record as outlined in this policy and the Act.
- C. "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 a state or county correctional facility in this state or any other state, or in a federal correctional facility.
- D. "Public record" means a writing 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. Public record does not include computer software.
- E. "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:
  - (i) 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.
  - (ii) 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.
- F. "Writing" means handwriting, typewriting, printing, photostating, 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.
- G. "Written request" means a writing that asks for information, and includes a



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.

## Article 2 Right to Records

- 2.1. A person has the right to public record(s) from the Village. The request must be in writing and sufficiently describe the public record to enable the FOIA Coordinator to identify the requested public record.
- 2.2. A person has the right to inspect a public record, or receive copies of requested records, unless exempted by law or court order. Upon written request, a person will be provided with a reasonable opportunity to examine the public records provided by the public body. Persons with special needs should contact the FOIA Coordinator to insure that arrangements for special needs or reasonable facilities are prepared. The Village shall protect public records from loss, unauthorized alteration, mutilation, or destruction. A person may request that copies of a public record be provided subject to the payment of fees outlined in the Village's detailed itemization.

## Article 3 Rights and Obligations of the Village

- 3.1 The FOIA Coordinator will provide a certified copy of a public record for an additional fee if a person so requests in writing at the time of the initial FOIA request.
- 3.2 Neither the Michigan Freedom of Information Act nor this Resolution require the Village or the FOIA coordinator to make a compilation, summary, report of information, or generate a new public record. This exemption includes analyzing, compiling, or summarizing existing information into a new format. Neither the Village nor the FOIA coordinator are obligated to provide answers to oral or written questions.
- 3.3 The FOIA Coordinator shall keep a copy of all written requests on file for no less than two years.
- 3.4 A written public summary of these procedures and guidelines regarding how to submit written requests for public records and how to understand responses to those requests, deposit requirements, fee calculations and avenues for challenge/appeal shall be made available free of charge to all those requesting records and to the public at the Village office and on Village website(s).
- 3.5 The Village shall have a standard detailed itemization that outlines all fee(s) assessed in response to a written request for public records. This form shall list and explain detailed and allowable charges for each of the six (6) fee components that include:

- A. Labor costs for searching, locating and examining records
- B. Labor costs for redacting records.
- C. Non-paper physical media.
- D. Paper copies.
- E. Labor costs for duplication or publication.
- F. Mailing

#### Article 4 Provisions For Copying Public Records

##### 4.1. Fees

- A. All FOIA requests submitted pursuant to the Act shall be subject to the fees and charges adopted by the Village of Bancroft. Fees shall be limited to actual mailing costs and to the actual incremental cost of duplication or publications including labor, the costs of the search for, examination of, review of and the deletion and/or separation of exempt from nonexempt information.
- B. The FOIA Coordinator may charge a fee for the labor involved with searching for, examining and reviewing a public record as permitted by the Act. Labor charges shall be in fifteen (15) minute increments. Where total fees and charges are reasonably anticipated to exceed fifty dollars (\$50.00), the Village requires that fifty percent (50%) of the estimated fees and charges be paid in advance of the performance of the work as authorized by the Act. The balance must be paid prior to the release of documents. The FOIA Coordinator will not charge additional fees for certification of any copies. Charges for labor costs will be determined by using the wages of the lowest paid employee capable of retrieving the requested information.
- C. A search for a public record may be conducted or copies of public records shall be furnished without charge for the first \$20.00 of the fee for each request if a requestor submits an affidavit indicating:
  - 1. the requestor is indigent and receiving specific public assistance, or
  - 2. facts showing an inability to pay due to indigency.
- D. A requestor is ineligible for an indigency discount if:
  - 1. the requestor has previously received discounted records from the



Village twice in the same calendar year, or

2. the requestor requests information in conjunction with an outside party who is offering remuneration.

E. The FOIA Coordinator shall notify a requestor if ineligible for the discounted records.

F. If the requestor is a nonprofit organization formally designated by the State of Michigan to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act shall received records without charge for the first \$20 of the fee for each request if the request:

1. Is made directly on behalf of the organization or its clients,
2. Is made for a reason wholly consistent with the mission and provisions of Sec. 931 of the Mental Health Code; AND
3. Is accompanied by documentation of its designation by the State, if requested by the Village or FOIA Coordinator.

G. Deposits

1. Fifty Percent (50%) Deposit

If an entire fee estimate or authorized charge, based upon a good-faith calculation, exceeds fifty dollars (\$50.00), the FOIA Coordinator may require a deposit that does not exceed one-half (½) the total estimated fee. The FOIA Coordinator shall submit a detailed itemization of the fees with the request for deposit. The request for a deposit shall include a non-binding, best efforts estimate of the time frame it will take the Village to provide the public record requested.

2. One Hundred Percent (100%) Deposit

The FOIA Coordinator shall require a deposit of 100% of the estimated charge from any individual who has not paid a previous FOIA fee in full to the Village prior to the Village beginning another search for that individual. This 100% deposit may only be required if:

- a. The prior final fee did not exceed 105% of the previously estimated fee.
- b. The new records requested contained the information being sought in prior requests and are still in the Village's possession.

- c. The public records were made available to the requested subject to payment within the time frame estimated.
- d. 90 days has passed since written notification to the requestor that the records were available.
- e. the requestor is unable to show proof of prior payment to the Village , AND
- f. The Village calculated a detailed itemization of the current request.

This 100% deposit shall not be required for a failure to pay if:

- a. The requestor can show proof of prior payment in full,
- b. The Village has subsequently been paid in full, OR
- c. 365 days have passed since the requestor made the written request for which full payment was not made.

## Section 5 Procedures Of The Village in Processing a FOIA Request

- 5.1 After a person has made a written request for a public record in accordance with the Act, the FOIA Coordinator shall respond within five (5) business days after its receipt. A written request made by facsimile, electronic mail or other electronic transmission is considered received by the Village's FOIA Coordinator one (1) business day after the electronic transmission is made. If an email request is forwarded to the Village's spam or junk mail folder, the request is not considered received until 1 business day after the Village first becomes aware of the request. The FOIA Coordinator shall keep a log of when requests are delivered to the Village spam or junk mail folder and when the Village becomes aware of the request.
- 5.2 If the FOIA Coordinator knows or has reason to know that all or a portion of a requested document is available on the Village's website at the time the request is made, the FOIA Coordinator shall notify the requesting person in writing that the record is located on the website and shall include to the degree practical, references to the specific webpage address where the record can be found.
- 5.3 If a portion of a requested record is available on the Village website(s), the FOIA Coordinator shall separate on the detailed itemization response those public records that are available on the Village website(s) from those public records that are not available on the Village website(s). The



FOIA Coordinator shall inform the requestor of the additional charge to receive copies of the public records that are available on the Village's website(s).

- 5.4 If a verbal request for information is made for information that the Village believes is available on the Village's public website(s), Village employees shall, where practicable and to the best of the Village's employee's knowledge, inform the requestor about the Village's website address.
- 5.5 The FOIA Coordinator shall then process the request in one of five ways:
  - A. Grant the request.
    1. If the request is for an inspection of public records, the FOIA Coordinator will contact the requesting person to arrange for inspection at a reasonable time during normal office hours.
    2. The FOIA Coordinator may request the appropriate deposit if permitted under 4.1 G.
  - B. Deny the request in a written notice that provides:
    1. An explanation as to why the requested public record is exempt from disclosure in accordance with the Act,
    2. An explanation that the requested public record does not exist,
    3. An explanation or general description of information which has to be redacted from the public record.
    4. In addition to the explanations above, the denial shall also include an explanation of the requesting person's right to appeal as outlined in Section 6.
  - C. Grant the request in part and issue a written notice denying the request in part. Any notice denying in part any requested records shall contain the appropriate explanations provided for in 5.5 (B) above.
  - D. Issue a written notice extending the time in which to respond to the request by an additional 10 business days.
  - E. If the request does not sufficiently describe the public records requested so as to permit the FOIA Coordinator to locate the correct records, the FOIA Coordinator will notify the requestor for

clarification of the request. Such a notice shall not be interpreted as a denial of the request for purposes of the Act or these policies and guidelines.

- 5.6 If a request is made for an existing public record that includes information which is exempt from disclosure under the act and information which is not exempt, the FOIA Coordinator must separate or redact the material and make the nonexempt material available for examination and/or copying. Additionally, the FOIA Coordinator is directed to generally describe the material which has to be separated or redacted, unless doing so would reveal the contents of the exempted information and thus defeat the purpose of the exemption.

## Section 6 Appeals

### 6.1 Denial of Records

- A. An appeal of a decision to deny records may be appealed to the Village President who has 10 business days to respond to the appeal.
- B. An civil lawsuit may also be brought in the 35<sup>th</sup> Circuit Court within 45 days after receiving a notice of the fee, or after a determination of appeal to the Village President is received, but only if:
1. The Village President failed to respond to the requestor's written appeal, or
  2. The Village President has issued a determination to the requestor's written appeal.

### 6.2 Excessive Fee

A requestor wishing to appeal a charged fee believed to be excessive, may file a written appeal that contains the word "appeal" and identified how the requestor believes the required fee exceeds the permitted amount. The Village President shall issue a decision within ten (10) business days responding to the appeal by indicating that:

- a. The fee is waived,
- b. The fee is reduced, OR
- c. An extension of time to respond of up to 10 business days is needed. The notice of an extension of time shall detail reason(s) why the extension is necessary.

In reducing or upholding a fee, the Village President shall provide a written determination indicating the specific basis that supports the

amount of the fee and shall certify that the statements therein are accurate and that the fee amount complies with the procedures and guidelines of the Village as well as the Act.

It is so resolved.

Moved By: Brian Barnum  
Seconded By: Phara Post

YEAS: 6/10/15 Bible, Goodrich, A. Miller, R. Miller, Post, Barnum, Johnson  
NAYS: NONE  
ABSENT: \_\_\_\_\_

Christopher S. Johnson  
Christopher S. Johnson, Village President

Vote Beside prior Village of Bancroft FOIA Resolution