



Muskegon Heights Public Schools

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Office of the Emergency Manager
Donald B. Weatherspoon

EM Order 2013 – 14

BY THE POWER AND AUTHORITY VESTED IN
THE EMERGENCY MANAGER FOR THE
SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS, MICHIGAN
("EMERGENCY MANAGER")
THROUGH 2012 PA 436, MCL 141.1541-141.1575

THE EMERGENCY MANAGER
HEREBY ISSUES THE FOLLOWING:

**ORDER ADOPTING FREEDOM OF
INFORMATION ACT COMPLIANCE POLICY**

The Local Financial Stability and Choice Act (2012 PA 436, MCL 141.1541, et seq.) in MCL 141.1552(1)(ee), provides that an Emergency Manager may exercise any power or authority of any officer or board of the local government relating to the operation of the local government. Michigan's Freedom of Information Act, MCL 15.231 et seq. ("FOIA"), permits a public body, including a school board, to designate an individual as its FOIA coordinator and to establish procedures and guidelines for processing requests for public records submitted under the Act.


The District periodically receives requests submitted under FOIA for copies or examination of public records. These requests can create a financial burden for the District by generating copying and mailing costs and by requiring District employees to search for and examine requested records instead of performing other tasks. Furthermore, failure to comply with the FOIA creates a risk of costly litigation. The financial condition of the District will benefit from adoption of a comprehensive policy that ensures compliance with the FOIA while collecting the fees permitted by the FOIA as much as is reasonable possible. Therefore,

IT IS HEREBY ORDERED:

The attached School District of the City of Muskegon Heights Public Schools Freedom of Information Act Compliance Policy is effective as of the date of this Order and supersedes all prior policies of the District regarding compliance with the FOIA.

This Order may be amended, modified, rescinded, or terminated only by a subsequent Order issued by the Emergency Manager.

Dated: March 28, 2013


Donald B. Weatherspoon
Emergency Manager

SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS PUBLIC SCHOOLS FREEDOM OF INFORMATION ACT COMPLIANCE POLICY

This policy establishes the procedures to be followed when responding to requests for public records submitted to the School District of the City of Muskegon Heights Public Schools (“the District”) under the Michigan Freedom of Information Act (“FOIA”). It is adopted effective the 28th day of March, 2013, pursuant to Emergency Manager Order 2013-14, and applies to all FOIA requests to which the District has not made a final response on that date. The Accounting Specialist is designated as the District’s FOIA Coordinator. The FOIA Coordinator is responsible for accepting and processing all FOIA requests and approving denials.

Receiving and Processing Requests

The District will respond only to written requests for public records under the FOIA; oral requests will not be accepted. A FOIA request must describe a public record sufficiently to enable the District to locate the public record. A request received by a District employee other than the FOIA Coordinator shall be immediately forwarded to the FOIA Coordinator. A written request made by facsimile, email, or other electronic transmission is deemed not to have been received by the FOIA Coordinator until one business day after the electronic transmission is made.

The FOIA Coordinator or his/her designee shall maintain a log of requests received, showing the date and nature of the request, the identity of the requestor, the date and manner of the final response to the request (including the disposition), the amount of fee charged, and the date and manner of delivery of any copies to the requestor. The FOIA Coordinator will keep a file copy of all FOIA requests and responses (except for unusually voluminous responses) for five years.

The FOIA Coordinator will promptly inform the District’s Emergency Manager (“EM”) of all FOIA requests received. On the first business day of each month, the FOIA Coordinator will forward to the EM and to each member of the School Board a copy of log entries showing all FOIA requests received and responses made during the preceding month.

The FOIA Coordinator and the Emergency Manager may seek assistance concerning FOIA requests from legal counsel at their own discretion.

Responding to Requests

The FOIA Coordinator will respond in writing within five (5) business days to a written request for a public document or record under the Freedom of Information Act in one of the following ways:

1. Grant the request.
2. Issue a written notice to the requesting person denying the request.
3. Grant the request in part and issue a written notice to the requesting person denying the request in part.

4. Issue a notice extending the period during which the District will respond to the request for not more than ten (10) business days.

If the FOIA Coordinator denies a request, the notice of denial will explain the reasons for denying the request – for example, that the public record is exempt from disclosure under FOIA, that the public record does not exist, or such other reason as permitted by law. The FOIA Coordinator will inform the requesting party of the right to appeal the denial to the EM (discussed further below) or seek judicial review. Notification of the right to judicial review must include notification of the right to receive reasonable attorney fees, costs, and possible damages.

Charging of Fees

The Freedom of Information Act permits a public body to charge a fee for the necessary copying of a public record for inspection or for providing a copy of a public record.

The District may charge a fee for actual mailing costs and actual copying costs, including labor for copying, searching, examining, reviewing, and deleting and separating exempt from nonexempt information. The labor costs charged will be calculated based on the hourly wage, including fringe benefit costs, of the lowest paid employee capable of retrieving the information necessary to comply with the request. If the fee will exceed \$50, the FOIA Coordinator will request a good faith deposit of one-half of the estimated total fee and has discretion to process the request only after the deposit is received. The District may require the requesting person to pay the fee in full before releasing the records requested.

Fees shall be uniform and not dependent upon the identity of the requestor. A fee will not be charged if the FOIA Coordinator determines that the request primarily benefits the general public. The decision whether to waive a fee shall be determined on a case-by-case basis by the FOIA Coordinator in conjunction with the EM. The first \$20 of the fee will not be charged if the requestor submits an affidavit that he or she is on public assistance or indigent. A records charge invoice may be included as part of the FOIA Coordinator's response.

Guidelines for Charging Fees

As a rule, a fee will be charged whenever the total of actual mailing and copying costs for a given request exceeds \$5.00. If the District charges a fee with respect to a given request, the following guidelines will govern calculation of the fee:

1. The actual cost of copying the records will be charged at a rate of \$.25 per page.
2. The actual cost of mailing the records by first-class mail will be charged.
3. The labor cost (the hourly wage, including fringe benefit costs, of the lowest paid employee capable of retrieving the information) will be charged for the time spent copying and mailing the records.
4. The labor cost for the time spent searching for, examining, and reviewing the records and deleting/separating exempt from nonexempt information will be charged when the cost to

respond to the FOIA request is unreasonably high. This determination will be made on a case-by-case basis considering the complexity and burdensomeness of the FOIA request, including the variety and number of documents requested, the number of documents that must be searched to respond to the request, the number of documents that must be examined to respond to the request, the location of the documents, and the amount of information that must be redacted. As a general rule, if a total of more than 30 minutes is required to complete these tasks, then the labor cost will be charged. (For example, no labor cost will be charged if the FOIA request seeks easily identifiable and easily retrievable documents consisting of a few pages and requiring minimal redactions. The labor cost will be charged if the FOIA request seeks multiple records or requires a search of numerous records, a search of records stored in different locations or mediums, or review for and/or redaction of exempt material.)

5. If a written request for a certified copy of the record is made, a certified copy of the record will be provided upon the payment of a \$10 fee for the first page and a \$1 fee for each additional page certified.

Appeal of FOIA Denial

If a FOIA request is denied by the FOIA Coordinator, the FOIA Coordinator must send a written notice to the requesting person containing the reasons for denial and explaining the right to submit a written appeal to the EM or seek judicial review in the circuit court.

A person whose FOIA request is denied and who elects to appeal the denial to the EFM must submit a written appeal to the EM using the word "appeal" and stating the reasons why the denial should be reversed.

The EM, within ten (10) business days after receiving the appeal, must reverse the denial, uphold the denial, or under unusual circumstances, issue a notice extending for no more than ten (10) additional business days the time to respond to the appeal.

The EM will reach a decision based on the requirements of the FOIA law. The FOIA Coordinator's decision will be upheld if the record does not exist or if one of the statutory exemptions to disclosure applies. If the EM reverses the FOIA Coordinator's denial, the FOIA coordinator will produce the requested material. If the EM upholds the FOIA Coordinator's denial, the EM will inform the person appealing in writing that the FOIA request has been denied on appeal and that the person has the right to seek judicial relief in the circuit court. If the EM reverses the denial in part and upholds the denial in part, then the EM will direct the FOIA Coordinator to produce the appropriate portions of the material requested and will inform the person appealing that, with respect to those aspects of the request that have been denied, the person may seek judicial review in the circuit court.

Inspection of Public Records

The FOIA Coordinator shall furnish a person whose request to examine public records is granted a reasonable opportunity for inspection and examination of the public records and shall furnish reasonable facilities for making memoranda or abstracts from the public records during the District's normal business hours.

Prior Policies Superseded

This policy supersedes all prior policies of the District regarding compliance with the FOIA and responding to requests for disclosure of public records, and may be amended or repealed only by a subsequent order of the Emergency Manager.

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