

BERRIEN MENTAL HEALTH AUTHORITY
PROCEDURE

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APPLICATIONS: All FOIA Requests EFFECTIVE DATE: 2024 APPROVED BY: Chief Executive Officer REVISED:	REQUIRED BY:

PURPOSE:

The purpose of this Procedure is to establish and make publicly available procedures and guidelines for use by the Berrien Mental Health Authority (“Authority”) regarding requests for public records and the costs and fees incurred in producing copies of public records under the Michigan Freedom of Information Act (“Act”), MCL 15.231 *et. seq.*

DEFINITIONS:

For purposes of this Policy the following definitions apply (all definitions are subject to the detailed definitions in the Act and any later amendments of the Act):

1. “Act” means the Michigan Freedom of Information Act, MCLA 15.231 *et seq.*
2. “Field name” means the label or identification of an element of a computer data base that contains a specific item of information and includes, but is not limited to, a subject heading such as a column header, data dictionary, or record layout.
3. “FOIA Coordinator” means the individual designated by the Authority to accept and process requests for public records under the Act.
4. “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.
5. “Public record” means a writing prepared, owned, used, in the possession of, or retained by the Authority in the performance of an official function, from the time it is created. Public record does not include computer software.
6. “Software” means a set of statements or instructions that, when incorporated in a machine usable medium, is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

7. “Unusual circumstances” means any one or a combination of the following, but only to the extent necessary for the proper processing of a request:

(a) 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.

(b) 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.

8. “Written request” means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

9. “Writing” means handwriting, typewriting, printing, photo-stating, 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.

PROCEDURES FOR FOIA REQUESTS:

1. The FOIA Coordinator, or in her/his absence the CEO is designated the Authority’s “FOIA Coordinator” and is vested with the Authority set out in the Act and this Policy. FOIA requests should be addressed as follows: FOIA Coordinator, Berrien Mental Health Authority, 1485 M-139, P.O. Box 547, Benton Harbor, MI 49023 (Email: djm@riverwoodcenter.org).

2. The FOIA Coordinator will accept and process written records requests for public records under the Act and will be responsible for issuing the appropriate written responses pursuant to Sections 4 and 5 and of the Act, including a requirement for costs and fees for production of documents, as allowed under the Act.

3. A Person desiring to inspect or receive a copy of a public record must make a written request to the Authority’s FOIA Coordinator that describes the public record requested in sufficient detail to enable the Authority to locate the public record.

4. A written request made by facsimile, electronic mail, or other electronic transmission is not deemed to be received by the FOIA Coordinator until one (1) business day after the electronic transmission is made. If a written request is delivered to the Authority’s spam or junk mail folder, the request is not deemed to be received until one (1) day after the Authority first becomes aware of the written request. The Authority shall note both the time a request is delivered to such spam or junk mail folder and the time the Authority became aware of that request.

5. Upon the FOIA Coordinator receiving a written request as described in this Policy, a Person has a right to inspect, copy, or receive copies of the requested public record of the Authority, unless the requested public record is exempt from disclosure under Section 13 of the Act.

6. The Authority will furnish a requesting Person a reasonable opportunity for inspection and examination of its public records and shall furnish reasonable facilities for making memoranda or abstracts from its public records during usual business hours.

7. A Person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to six months, at the request of the subscriber, and shall be renewable.

8. The Act does not require the Authority to make a compilation, summary, or report of information, nor does the Act require the creation a new public record. All officers, employees, and agents of the Authority shall protect its public records from loss, unauthorized alteration, mutilation, or destruction.

9. If the FOIA Coordinator knows that the documents responsive to all or a portion of a request are available on the Authority's website, the Coordinator will notify the requestor of the same. To the extent practicable, the Coordinator will direct the requestor to the website address where the document can be found.

10. When the FOIA Coordinator receives a written request for a public record, Coordinator (or designee) will, in not more than five (5) business days after receipt of the request, unless a longer time is agreed to in writing by the Person making the request, respond to the request in one of the following ways:

- a. Grant the request.
- b. Issue a written notice to the requesting Person denying the request.
- c. Grant the request in part and issue a written notice to the requesting Person denying the request in part.
- d. Issue a written notice extending for not more than ten (10) business days the period in which the Authority will respond to the request. The Authority will not issue more than one notice of extension for a particular request, unless otherwise agreed to in writing by the requesting Person.

11. If a public record contains material which is not exempt from disclosure under the Act and material which is exempt, the FOIA Coordinator or designee will separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

12. Any Authority employee authorized to respond to requests for public records may consult with the Authority's Office, as necessary, prior to responding to a FOIA request.

13. A written notice denying a request for a public record in whole or in part is a final determination to deny the request or portion of the request. The written notice must contain:

- a. An explanation of the basis under the Act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
- b. A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the Authority if that is the reason for denying the request or a portion the request.
- c. A description of a public record or information on a public record that is separated or deleted if such separation or deletion is made.
- d. A full explanation of the requesting Person's right to do either of the following:

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(1) Submit to the Authority's Chief Executive Officer at Berrien Mental Health Authority, 1485 M-139, P.O. Box 547, Benton Harbor, MI 49023, a written appeal that specifically states the word "appeal" and identifies the reason(s) for reversal of the disclosure denial. All appeals will be reviewed by the Chief Executive Officer.

Within ten (10) business days after receiving a written appeal, the Chief Executive Officer will do one (1) of the following: (a) reverse the disclosure denial; (b) issue a written notice to the requesting Person upholding the disclosure denial; (c) reverse the disclosure denial in part and issue a written notice to the requesting Person upholding the disclosure denial in part; or (d) under unusual circumstances, issue a notice extending for not more than ten (10) business days the period in which the Chief Executive Officer will respond to the written appeal. The Chief Executive Officer will not issue more than one (1) notice of extension for a particular written appeal; or

(2) Seek judicial review of the denial under Section 10 of the Act, by commencing a civil action in the Berrien County Circuit Court to compel the Authority's disclosure of the public records within 180 days after the Authority's final determination to deny a request and provide notice of the right to receive attorneys' fees and damages as provided in Section 10 of the Act (MCLA 15.240) if, after judicial review, the Court determines that the Authority has not complied with Section 5 of the Act and orders disclosure of all or a portion of a public record.

FEES PROVIDING PUBLIC RECORDS:

The Authority will charge a fee for a public record search, copying of a public record, or for providing a copy of a public record according to the following guidelines:

1. **LABOR.** Fees assessed under this Policy shall be limited to the portion of labor costs directly associated with the search for, examination, and separation of exempt from nonexempt information (redaction) of public records, at the hourly rate of the lowest paid employee capable of performing the work, rounded down to the nearest ¼ hour. Costs directly associated with duplication, copying and transfer of records shall also be invoiced at the hourly rate of the lowest paid employee capable of performing the work, but will be rounded down to the nearest 1/10 hour.

2. **MAILING.** Costs for mailing shall not exceed the actual cost of postage and materials necessary for delivery in a reasonably economical and justifiable manner.

3. **COPYING.** For paper copies, the actual total incremental cost of duplication (excluding labor) shall be charged, not to exceed ten (10) cents per sheet. The most economical means available for copying records shall be used, including using double-sided printing, if cost savings are achieved and such double-sided printing is available. For records provided on non-paper media, the Authority may charge the actual and most reasonably economical cost of computer discs, tapes, memory sticks or other digital media.

4. **ELECTRONIC RECORDS.** To the extent that the Authority is technologically able to provide such records, a Person may stipulate that the public records be provided on non-paper media, electronically mailed, or otherwise electronically provided in lieu of paper copies.

5. **GOOD FAITH DEPOSIT.** The Authority may require at the time a request is made a good faith deposit from the Person requesting the public record, if the anticipated authorized fee exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee. The estimate for such deposit shall be itemized and shall include a non-binding, best effort estimate of the time frame for the production of the records sought.

6. **UNREASONABLY HIGH COSTS.** A fee will not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information, unless failure to charge a fee would result in unreasonably high costs to the Authority because of the nature of the request and the Authority specifically identifies the nature of these unreasonably high costs.

7. **FEE APPEAL.** If a Person believes that the Authority is requiring a fee that exceeds the amount permitted under this Policy or the Act, the Person do any of the following:

(a) Submit to the Authority's Chief Executive Officer a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under this Policy. Within ten (10) business days after receiving a written appeal under subsection (1)(a), the Chief Executive Officer will do 1 of the following: (1) waive the fee; or (2) reduce the fee and issue a written determination to the Person indicating the specific basis that supports the remaining fee: the determination shall include a certification from the Chief Executive Officer that the determination of the fees is accurate and that the reduced fee amount complies with this Policy; (3) uphold the fee and issue a written determination to the Person indicating the specific basis that supports the required fee: this determination shall include a certification from the Chief Executive Officer that the determination of fees is accurate and that the fee amount complies with this Policy; or (4) issue a notice extending for not more than ten (10) business days the period during which the Chief Executive Officer must respond to the written appeal. The notice of extension will include a detailed reason(s) why the extension is necessary. The Chief Executive Officer will not issue more than one (1) notice of extension for a particular written appeal.

(b) In the alternative, a Person may commence a civil action in the Berrien County Circuit Court for a fee reduction. The action must be filed within forty-five (45) days after receiving the notice of the required fee or a determination of an appeal to the Authority's Chief Executive Officer. If a civil action is commenced regarding fees, the Authority is not obligated to complete the processing of the public records request at issue, until the Court resolves the fee dispute. According to the Act, an action is not be filed under the Act unless one (1) of the following applies: (i) the Authority does not provide for fees appeals, (ii) the Authority's Chief Executive Officer failed to respond to a written appeal as required under the Act, or the Chief Executive Officer issued a determination to a written appeal. In an action commenced by a Person, a court that determines the required fee exceeds the amount permitted under this Policy shall reduce the fee to a permissible amount. The court shall determine the matter anew, and the burden is on the Authority to establish that the required fee complies with this Policy. Failure to comply with an order of the court may be punished as contempt of court. If a Person prevails in an action by receiving a reduction of fifty percent

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(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. If the court determines in an action that the Authority acted arbitrarily and capriciously violated the Act by charging an excessive fee, the court will order the Authority 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 term "fee" means the total fees or any component of the total fee calculated under Section 4 of the Act, including any deposit.

8. INDIGENT INDIVIDUALS. 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 to a individual who is entitled to information under the Act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay costs because of indigency. An individual is ineligible for this fee reduction if the individual has previously received discounted copies of public records from the Authority twice in the same calendar year as the current request or if the request is made in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request.

9. FAILURE BY THE AUTHORITY TO RESPOND TIMELY. If the Authority fails to respond timely to a written records request, and such failure is willful and intentional, charges for labor costs will be reduced by 5% per day up to a maximum reduction of 50%; provided that the request includes language such as "Freedom of Information", "FOIA", "copy" or a legal citation to the Act within the first 250 words of the written request, on the front of the envelope containing such request, or subject the line of an email or facsimile cover page making a request.

1. The foregoing guidelines do not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

2. The Authority shall use the Calculation of Fees and Costs form as a guide in calculating the amount of the fee and deposit to be charged and providing same to the requesting Person as part of a FOIA response, when appropriate.

REFERENCES:

- 1) Act 442 of 1976
- 2) Calculation of Fees & Costs

Reviewer: FOIA Coordinator

Reviewed: