

## EAGLES NEST ACADEMY

### FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

#### **Preamble: Statement of Principles**

It is the policy of the Academy that all persons, *except those who are incarcerated*, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The Academy's policy with respect to FOIA requests is to comply with State law and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Academy acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Academy acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The Academy will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Academy's policy is to disclose public records consistent with and in compliance with State law.

The Academy has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

These procedures and guidelines regarding time frames, appeals, and fees do not apply to public records prepared for, or disclosed pursuant to another act or statute (i.e., requests for medical records made pursuant to the Public Health Code, or requests made pursuant to the Public Employment Relations Act or the Bullard-Plawecki Employee Right to Know Act, etc.)

#### **Section 1: General Policies**

The Academy Board of Directors (the "Board") acting pursuant to the authority at MCL 15.236 designates \_\_\_\_\_ as the FOIA Coordinator. He or she is authorized designate other staff to act on his or her behalf to accept and process written requests for the Academy's public records and approve denials.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

If a request for a public record is received by fax or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to an Academy spam or junk-mail folder, 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 spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review Academy spam and junk-mail folders regularly, which shall be no less than once a month.

The Academy 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 Academy staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the Academy on file for a period of at least one year.

The Academy will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. If it does not, the Academy cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance.

## **Section 2: Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by Academy must do so in writing. The request must sufficiently describe a public record so as to enable Academy employees to identify and find the requested public record.

No specific form to submit a request for a public record is required. The FOIA Coordinator may make available a FOIA Request Form.

Written requests for public records may be submitted in person or by mail to the FOIA Coordinator at the following address \_\_\_\_\_ . Requests may also be submitted electronically by fax and e-mail. Requests by fax should use following number: \_\_\_\_\_. E-mail requests should be submitted to the following e-mail address: \_\_\_\_\_ Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for review and processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or other otherwise provided to him or her in lieu of paper copies.

The Academy will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the Academy on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

The FOIA Coordinator, or any other designee, is not required to respond to oral requests for public records, but may do so for routine requests that can be granted immediately, provided that if a person makes a verbal, non-written request for information believed to be available on the Academy's website, where practicable and to the best ability of the personnel receiving the request, shall be informed of the pertinent website address.

Verbal requests for records may be documented by the Academy on the Academy's FOIA Request Form or by other written method.

In accordance with state law, a person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **Section 3: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, the Academy will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, e-mail or other electronic transmission, the request is deemed to have been received on the following business day.

The Academy will respond to the request in one of the following methods:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that the time to respond is extended for a period not to exceed an additional 10 business days. Only one such extension is permitted under the law.
- Issue a written notice indicating that the public record requested is available at no charge on the Academy's website.

Any failure to respond to a written request as provided for above constitutes the Academy's determination to deny the request.

### **When a request is granted:**

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the Academy's website, then a website link to those documents may be provided instead of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

When the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not fully paid for a previously granted request, the Academy will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the Academy to process the request and also provide a best efforts estimate of a time frame it will take the Academy to provide the records to the requestor. The best efforts estimate shall be nonbinding on the Academy, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

#### **When a request is denied or denied in part:**

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the Academy; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the Academy Board of Directors or seek judicial review in the Genesee County Circuit Court; and

- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

### **Requests to inspect public records:**

The Academy shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect Academy records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Academy operations.

### **Requests for certified copies:**

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

### **Section 4: Fee Deposits**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the Academy, the requestor will be asked to provide a deposit not exceeding on-half of the total estimated fee.

The FOIA Coordinator may request a 100% deposit from a requests, if a request for public records is from a person who has not fully paid the Academy for copies of public records made in fulfillment of a previously granted written request. The FOIA Coordinator may require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person provided that all of the following conditions exist:

- the final fee for the prior written request is not more than 105% of the estimated fee;
- the public records made available contained the information sought in the prior written request and remain in the Academy possession;

- the public records were made available to the individual, subject to payment, within the time frame estimated by the Academy to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the Academy ; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to the Academy;
- the Academy is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the Academy.

All fees and deposits calculated under this procedures shall be included within a detailed itemization form that shall be provided to the requestor.

## **Section 5: Calculation of Fees**

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 Academy because of the nature of the request in the particular instance, and the Academy specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are “unreasonably high” when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the Academy’s usual FOIA requests, not compared to the Academy’s operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)

The following additional factors shall be used to determine an unreasonably high cost to the Academy:

- Volume of the public record requested

- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one Academy department or various Academy locations/sites is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan FOIA permits the Academy to charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down<sup>†</sup>.
- Labor costs will be charged at the hourly wage of the lowest-paid Academy employee capable of doing the work in the specific fee category, regardless of who actually performs work.<sup>‡</sup>
- If the Academy 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 (including outside counsel). In those instances, the Academy will note the name of person or firm who does the work on the itemization form. The total labor cost may not exceed an amount 6 times the state minimum hourly wage (currently \$8.15).

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<sup>†</sup> The cost of labor directly associated with duplication, publication or transferring records to nonpaper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down.

- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The Academy may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the Academy has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Academy will procure any requested non-paper media and will not accept non-paper media from the requestor in order to ensure the integrity and security of the Academy's technological infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The Academy may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The Academy may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the Academy exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:

- The late response was willful and intentional.
  - The written request, within the first 250 words of the body of a letter, facsimile, e-mail or e-mail attachment conveyed a request for information
  - The written request included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy” or a recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form

## **Section 6: Waiver & Discount of Fees**

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public. The Academy Board of Directors may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

### **Indigence**

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the Academy twice<sup>§</sup> during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

### ***Nonprofit organization advocating for developmentally disabled or mentally ill individuals***

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<sup>§</sup> The FOIA requires that an indigent requestor is entitled to at least two discounted fees in a calendar year; the Academy may permit more than two if the FOIA Coordinator chooses to do so.

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization designated to by the State 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, or their successors, if the request meets all of the following requirements:
  - is made directly on behalf of the organization or its clients;
  - is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931;
  - is accompanied by documentation of its designation by the State.

## **Section 7: Appeal of a Denial of a Public Record**

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

The Board is not considered to have received a written appeal until the first regularly scheduled Board meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the Board will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.
- Under unusual circumstances, issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal.

Whether or not a requestor submitted an appeal of a denial to the Board, he or she may elect to file a civil action in Genesee County Circuit Court within 180 days after the Academy's final determination to deny the request.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the Academy arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000. *Court shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.*

### **Section 8: Appeal of an Excessive FOIA Processing Fee<sup>††</sup>**

“Fee” means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the Academy to process a FOIA request exceeds the amount permitted by law, he or she must first submit a written appeal for a fee reduction to the Board. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Board will respond in writing by:

- waiving the fee;
- reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Board that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Board will respond to the written appeal. The Board shall not issue more than 1 notice of extension for a particular written appeal.

Within 45 days after receiving notice of the Board’s determination of a fee appeal, a requestor may commence a civil action in County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the Academy is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the Academy required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys’ fees, costs and disbursements.

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<sup>††</sup> A public body does not have to provide for administrative fee appeals; if such is the case, the fee appeal is made directly to circuit court within 45 days of receiving notice of the required fee.

If the court determines that Academy has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.

### **Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the Academy these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the Academy, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the Academy, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the Academy of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

### **Section 10: Appendix of Academy FOIA Forms**

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form
- Appeal Form
- Certification Form