

**Fahey Schultz  
Burzych Rhodes**

EXPERT COUNSEL  REAL SOLUTIONS

---

# Beginner's Guide to Conquering Large-Scale FOIA Requests

---

ATTORNEY KENDALL O'CONNOR

AUGUST 19, 2021

---

# Disclaimer

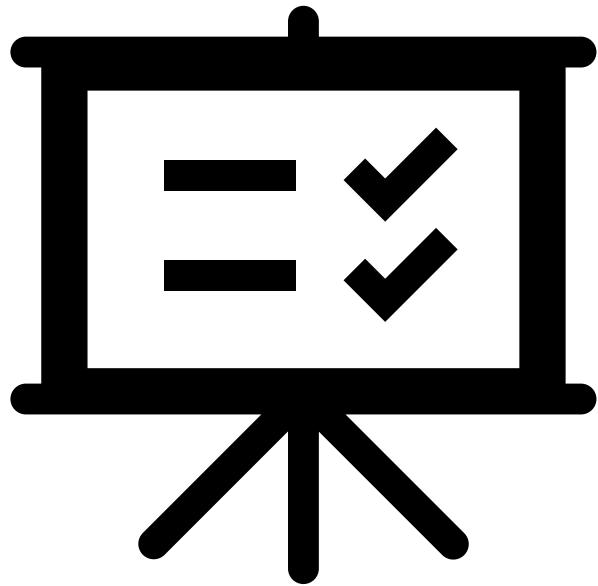
---

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice.
- Please consult an attorney if you need assistance related to a specific legal issue related to the FOIA.



# Goals

---



- ✓ Determine your timeline and deadlines for answering a complex FOIA request.
- ✓ Discover what costs can be recovered for responding to a complex FOIA request.
- ✓ Learn how to utilize a good-faith estimate request to your benefit.
- ✓ Learn when and how a municipality can consider a FOIA request to be abandoned.
- ✓ Answer Questions.



# Freedom of Information Act, Act 442 of 1976

- The Michigan Freedom of Information Act is designed to provide citizens with access to public records.
- Goal is transparency, and the ability to obtain information on a public body's official activities.
- FOIA is a pro-disclosure statute.

# FOIA Requests

---

- A “FOIA Request” is a written request for public records.
- If a public body has a responsive record, it must produce that record *unless* an exemption applies.
- A public body may charge statutory fees incurred due to the request.
- A public body must respond to a request within a narrow window of time.



# FOIA Coordinator

---

- Townships are required to appoint a FOIA Coordinator. MCL 15.236(1).
- The FOIA Coordinator is the individual that oversees responding to FOIA requests.
- Designated by the Township Board.
  - Can be a Board member
  - Can be a Township employee
- Duties typically include drafting responses to requests, locating responsive records, redacting exempt information, and copying responsive records.



# Public Records

---

- A public record is a writing prepared, owned, used, in the possession of a public body in the performance of an official function.



# Large-Scale FOIA Requests

---



**Time**



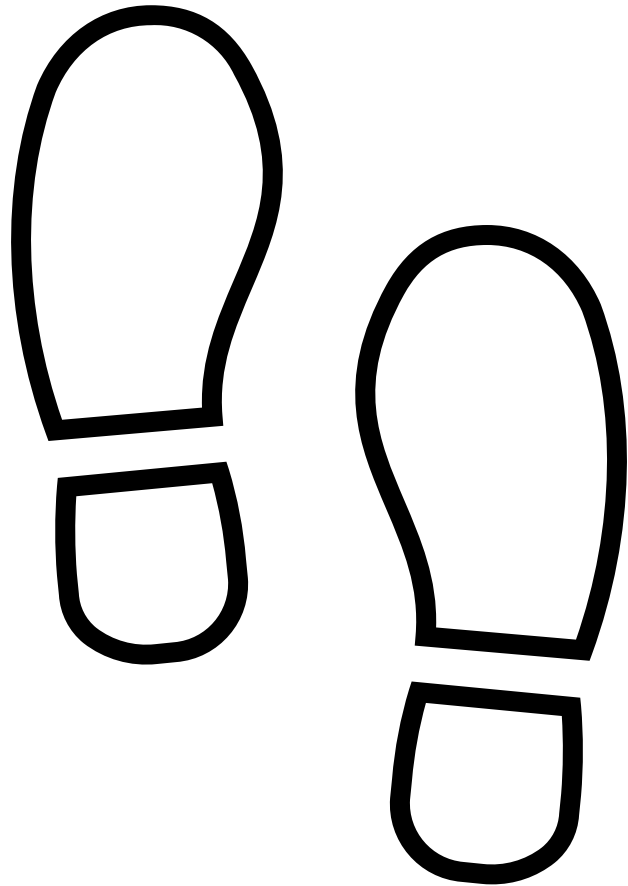
**Resources**



# Large-Scale FOIA Request Example

“I request a copy of all e-mails between Township Board members for the past three years.”





# Steps in Answering Large-Scale FOIA Requests

---

# Step 1: Confirm Request is Properly Submitted

- Request must contain:
  - Complete name
  - Address written in compliance with USPS addressing standards
  - Email address or telephone number



A close-up photograph of an hourglass with red sand. The sand is flowing from the top bulb to the bottom bulb. The top bulb is partially filled, and the bottom bulb has a small amount of sand at the bottom. The background is blurred.

## Step 2: Confirm Your FOIA Timeline And Deadlines to Respond

---

- Township must issue a response within 5 business days of receipt of a FOIA request.
- Township may issue a notice of extension for an additional 10 business days to respond for a total of no more than 15 days.



# FOIA Timeline Example

---



# Township's Initial Response to a FOIA Request



Grant the Request



Issue written notice denying the request



Grant the request in part and issue a written notice denying in part



Issue a notice indicating a 10-day extension



Issue a written notice indicating that the public record requested is available at no charge on the Township's website



# Extension Language

---

“The Township received your Michigan Freedom of Information Act (“FOIA”) request on \_\_\_\_\_. The Township requires an additional ten (10) business days to respond to your request due to the need to properly search for, collect, and examine the public records within the scope of your request, and to determine the extent to which those documents may be exempt under the FOIA. MCL 15.235(2)(d).

The Township will respond to your request in writing by \_\_\_\_\_ by doing one of the following: (1) granting the request, (2) denying the request, or (3) granting the request in part and denying the request in part. If you have any questions or concerns, please contact the undersigned.”



# Optional: Request to Specify

---

- When a public body receives such a broad FOIA request, it is not uncommon the requestor submitted the request without understanding the potential costs associated with the request, or the requestor is actually looking for something other (and usually more narrow) than what was described in the request.
- You may contact the requestor to ask whether they have a desire to narrow the scope of their request. A narrowed down FOIA request that more specifically identifies the objective for the request will likely reduce the potential response cost.
- If made in writing, ensure the correspondence is not intended to be, nor should it be construed as, a response pursuant to MCL 15.235(2).



A request's size does not relieve the municipality from processing the request.



If the cost of processing a FOIA request is expected to exceed \$50, the Township should require a good-faith deposit prior to processing the request.



Give requestor a best efforts estimate of a time frame the records will be provided to the requestor.



Provide requestor with detailed itemization of the allowable costs estimated to be incurred by the Township.

## Step 3: Request a Good-Faith Deposit



# Procedures & Guidelines, & Summary

---

- A Township must establish procedures and guidelines to implement the FOIA and must create a written public summary of the specific procedures and guidelines.
- If the Township directly or indirectly administers or maintains an official internet presence, it must post and maintain the procedures and guidelines and its written public summary on its website.
- In your request for a good-faith deposit, provide a link to these materials.

“A public body that has not established procedures and guidelines, has not created a written public summary, or has not made those items publicly available without charge as required in this subsection is not relieved of its duty to comply with any requirement of this act and shall not require deposits or charge fees otherwise permitted under this act until it is in compliance with this subsection.” MCL 15.234(4).

# Recoverable FOIA Costs

---

- Recoverable Costs Include:
  - Labor Cost for Copying / Duplication
  - Labor Cost to Locate
  - Labor Costs for Separating exempt from non-exempt information

**\*NOTE:** If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Township shall notify the requestor in its written response that all or a portion of the requested information is available on its website. These records are going to be exempt from charges unless otherwise stipulated to by the requestor.



# Good-Faith Requests

---

- A good-faith deposit request letter requires a good-faith deposit of 50% of the estimated fees be paid by the requestor before the Township needs to: (1) begin a search for records; or (2) make any copies.
- The Township should NOT begin to locate records until it receives the required good-faith deposit. If you do not receive a good-faith deposit within 48 days from e-mailing the response, the Township may consider the FOIA request abandoned and stop processing the request.

# Step 4: Process Request

---



- If a good-faith deposit is received, the Township should begin searching for and locating responsive records.
- Track the time and costs incurred to be included in the final cost sheet.
- Deadline to respond will be based on the best-efforts estimate.
  - This deadline is non-binding but should be made in good faith and strive to be reasonably accurate.
- Review package of materials for any sensitive information that should be exempt from disclosure before providing to requestor.



# FOIA Exemptions

---

- Townships must balance confidentiality with public transparency.
  - Records that are subject to an exemption may have any exempt material redacted.
- The most commonly used exemptions include:
  - Personal information if disclosure would be a clearly unwarranted invasion of an individual's privacy.
  - Information or records subject to attorney-client privilege.

Generally, the FOIA does not require a public body to create a new public record. The FOIA also generally does not require a public body to make a compilation, summary, or report of information.

# Step 5: Abandoning the Request

---



If a good-faith deposit is not received within 48 days from the date the notice is sent AND the requestor has not filed an appeal of the deposit amount, the Township should consider the request abandoned.



A municipality is not required to fulfill an abandoned request.



# Record Retention

---

- MCL 399.5 renders records created by the Township property of the State.
- Records may only be destroyed with permission of the State.
- The State has drafted “General Schedules,” which list the length of time different forms of records must be retained.
- All general schedules for local government may be found online at:  
[https://www.michigan.gov/dtmb/0,5552,7-358-82548\\_21738\\_31548-56101--,00.html#twp](https://www.michigan.gov/dtmb/0,5552,7-358-82548_21738_31548-56101--,00.html#twp)





# Tips for More Efficient Records Retrieval

## Organize Digital Records

- Folder and document names should be unique
- Establish naming conventions so that records are named consistently (ex. 2021.01.06 Minutes of Township Board Meeting)

## Increase Search Accuracy

- Make a practice of scanning documents using Optical Character Recognition (OCR) to create searchable documents
  - Gives you the capability to search for specific documents using a keyword or phrase.
  - For example, you could effortlessly search thousands of documents and locate a specific name in just moments, without having to thumb through extensive files.

## Enhancing Online Access

- More information online negates the need for a FOIA request



# Questions

---

Kendall R. O'Connor

Fahey Schultz Burzych Rhodes PLC

4151 Okemos Rd., Okemos, MI 48864

Tel: 517-381-0100

[koconnor@fsbrlaw.com](mailto:koconnor@fsbrlaw.com)

[www.fsbrlaw.com](http://www.fsbrlaw.com)

*This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation. Please contact an attorney if you need assistance related to a specific legal issue.*

