

Ironwood Housing Commission

Written Public Summary of FOIA Procedures and Guidelines

It is the public policy of Michigan that all persons (except those persons incarcerated in state or local correctional facilities) 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 public employees.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, MCL 15.231, the following is the Written Public Summary of the Commission's FOIA Procedures and Guidelines relevant to the general public. This is only a summary of the Commission's FOIA Procedures and Guidelines. For more details and information, copies of the Commission's FOIA Procedures and Guidelines are available at no charge at any Commission office.

1. How do I submit a FOIA request to the Commission?

- A request must sufficiently describe a public record so as to enable the Commission to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the Commission in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Commission may be submitted on the Commission's FOIA Request Form, or in any other form of writing (letter, fax, email, etc.).
 - Any verbal request must be reduced to writing by the requestor.
 - No specific form to submit a written request is required. However, a FOIA Request Form is available for your use and convenience in the Commission's office at 515 E. Vaughn Street, Ironwood, MI 49938
- Written requests may be delivered to the Commission, in person or by mail, to: 515 E. Vaughn Street, Ironwood, MI 49911.
- Requests may be faxed to: (906) 932-3341. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.
- Requests may be emailed to: bobbie@ironwoodhousing.net To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.

2. What kind of response can I expect to my FOIA request?

- Within 5 business days after receiving a FOIA request, the Commission will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The Commission will respond to your request in one of the following ways:
 - 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 due to the nature of the request the Commission needs an additional 10 business days to respond; or
 - Issue a written notice indicating that the public record requested is available at no charge on the Commission's website. (Not available)
- If the request is granted, or granted in part, the Commission will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.
- If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the Commission will require a deposit before processing the request.

3. What are the Commission's FOIA fee deposit requirements?

- If the Commission has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the Commission will require that you provide a deposit in the amount of 50% of the total estimated fee. When the Commission requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.
- If the Commission receives a request from a person who has not paid the Commission for copies of public records made in fulfillment of a previously granted written request, the Commission will require a deposit of 100% of the total estimated fee before it begins to search for the public record for any subsequent written request when **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 Commission's possession;
 - The public records were made available to the individual, subject to payment, within the time frame estimated by the Commission to provide the records;
 - Ninety (90) days have passed since the Commission 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 Commission; and
 - The Commission has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The Commission will not require the 100% 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 Commission;

- The Commission is subsequently paid in full for all applicable prior written requests; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the Commission.

4. How does the Commission calculate FOIA processing fees?

FOIA permits the Commission to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to nonpaper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Commission.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Commission.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the Commission's website if you ask the Commission to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the Commission's website if you ask the Commission to make copies.
- The cost to mail or send a public record to a requestor.

Labor Costs

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Commission employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The Commission 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 unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).

A labor cost will not be charged for the 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 Commission. Costs are unreasonably high when they are beyond the normal or usual amount for those services compared to the Commission's usual FOIA requests. The Commission must specifically identify the nature of the unreasonably high costs in writing.

Copying and Duplication

The Commission must use the most economical method for making copies of public records, including using double-sided printing, if cost saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, 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 be charged only if the Commission has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11-inch) or legal (8 ½ x 14-inch) 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.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.
- The Commission may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless you request it.

5. How do I qualify for reduced FOIA processing fees?

Waiver 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 it can be considered as primarily benefitting the general public. The Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

Indigence

The Commission will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are not eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the Commission twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is a sworn statement. For your convenience, the Commission has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the Commission FOIA Request Form, which is available in the Commission's office at 515 E. Vaughn Street, Ironwood, MI 49938.

Nonprofit Organization (advocating for developmentally disabled or mentally ill persons).

A nonprofit organization that is formally designated by Michigan to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- 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, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by Michigan.

6. How may I challenge the denial of a FOIA request or an excessive FOIA processing fee?

Appeal of a Denial of a Request (Public Record)

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the Commission by filing a written appeal of the denial with the office of the Executive Director. The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial. The Commission is not considered to have received a written appeal until the first regularly scheduled Commission meeting following submission of the written appeal.

Within 10 business days of receiving the appeal, the Commission 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.

Whether or not you submitted an appeal of a denial to the Commission, you may file a civil action in Gogebic County Circuit Court within 180 days after the Commission's final determination to deny your request. If you prevail in the civil action, the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the Commission acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the Commission to process your FOIA request exceeds the amount permitted by law, you must first appeal to the Commission by filing a written appeal for a fee reduction with the office of the Executive Director. The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The Commission is not considered to have received a written appeal until the first regularly scheduled Commission meeting following submission of the written appeal.

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

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue 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 Commission will respond to the written appeal.

Within 45 days after receiving notice of the Commission's determination of the processing fee appeal, you may commence a civil action in Gogebic County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or an appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the Commission acted arbitrarily and capriciously by charging an excessive fee, the court may also award you punitive damages in the amount of \$500.

Ironwood Housing Commission

Freedom of Information Act (FOIA) Procedures and Guidelines

Preamble: Statement of Principles

It is the policy of the Ironwood Housing Commission that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, MCL 15.231, *et seq.*, 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 Commission's policy with respect to FOIA requests is to comply with the law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Commission acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Commission 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 Commission will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Commission's policy is to disclose public records consistent with and in compliance with the law.

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

Section 1: General Policies

The Commission, acting pursuant to the authority at MCL 15.236, designates the Executive Director as the FOIA Coordinator. He or she is authorized to designate other Commission staff to act on his or her behalf to accept and process written requests for the Commission's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a Commission 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 Commission spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with Commission information technology staff to develop administrative rules for handling spam and junk-mail so as to protect Commission systems from computer attacks which may be imbedded in an electronic FOIA request.

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

The Commission 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 Commission 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 Commission on file for a period of at least one year.

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

A copy of this Procedures and Guidelines document and the Commission's Written Public Summary must be publicly available by providing free copies both in the Commission's response to a written request and upon request by visitors at the Commission's office.

Section 2: Requesting a Public Record

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available a FOIA Request Form for use by the public. A request must sufficiently describe a public record so as to enable Commission personnel to identify and find the requested public record.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Commission may be submitted on the Commission's FOIA Request Form, or in any other form of writing (letter, fax, email, etc.). Verbal requests for records must be reduced to writing by the requestor.

Written requests for public records may be submitted in person or by mail to any Commission office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise electronically provided to him or her in lieu of paper copies. The Commission will comply with the request only if it possesses the necessary technological capability to provide records in the requested nonpaper physical media format.

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

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 Commission will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day. (See section 1 for rule on spam/junk-mail.)

The Commission will respond to a request in one of the following ways:

- 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 due to the nature of the request the Commission needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Commission's website. (Not available)

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 and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records.

If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained. If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the Commission will require a good-faith deposit pursuant to Section 4 of this policy 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 Commission to process the request and also provide a best efforts estimate of a time frame it will take the Commission to provide the records to the requestor. The best efforts estimate shall be nonbinding on the Commission, 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 MCL 15.231.

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 Commission; 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 office of the Executive Director or seek judicial review in the Gogebic County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should he/she 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 policy.

Requests to inspect public records:

The Commission 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 Commission records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Commission 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, the requestor will be asked to provide a deposit of one-half (50%) of the total estimated fee.

If a request for public records is from a person who has not paid the Commission in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will 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 when 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 Commission's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Commission to provide the records;
- Ninety (90) days have passed since the Commission 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 Commission; and
- The Commission has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The Commission 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 Commission;
- The Commission is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the Commission.

Section 5: Calculation of Fees

A fee may be charged for the labor cost of copying/duplication. A fee will *not* be charged for the labor 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 Commission because of the nature of the request in the particular instance, and the Commission specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from nonexempt 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 Commission's usual

FOIA requests, not compared to the Commission's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)

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

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from nonexempt information in the record requested.
- Whether the public records are from more than one Commission department or whether various Commission offices are 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 FOIA permits the Commission to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to nonpaper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Commission.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Commission.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the Commission's website if you ask the Commission to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in nonpaper physical media. This may include the cost for copies of records already on the Commission's website if you ask the Commission to make copies.
- The cost to mail or send a public record to a requestor.

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. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Commission employee capable of doing the work in the specific fee category, regardless of who actually performs the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The Commission 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 unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of 6 times the MI minimum hourly wage (currently \$48.90).

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 Commission has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Commission will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the Commission's technology 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 (8½ x 11-inch) or legal (8½ x 14-inch) 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 Commission will provide records using double-sided printing, if it is 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 Commission may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the Commission does not respond to a written request in a timely manner, the Commission must:

- Reduce the labor costs by 5% for each day the Commission exceeds the time permitted under FOIA up to a 50% maximum reduction, if *any* of the following applies:
 - The Commission's late response was willful and intentional,
 - The written request conveyed a request for information within the first 250 words of the body of a letter, facsimile, email or email attachment, or
 - 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 email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver 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 it can be considered as primarily benefitting the general public. The Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

In determining whether the general public is primarily benefited, the FOIA Coordinator shall consider the following factors, none of which shall be determinative:

- Whether the public record being disclosed serves the public policy purposes set forth at Section 1 of the FOIA;
- Whether the release primarily serves a private or commercial purpose;
- Whether the release implicates the rights of third persons;
- Whether waiver of the fee is in the best interest of the Commission; and
- The manner in which similar requests have been treated.

Section 7: Discounted Fees

Indigence

The Commission will discount 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 indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the Commission twice 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 a sworn statement made under the penalty of perjury. 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

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

- A nonprofit organization formally designated Michigan to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, 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, 1974 PA 258, MCL 330.1931.
 - Is accompanied by documentation of its designation by Michigan.

Section 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the Commission by filing an appeal of the denial with the office of the Executive Director. 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 Commission is not considered to have received a written appeal until the first regularly scheduled Commission meeting following submission of the written appeal.

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

- Reversing the disclosure denial;
- Upholding the disclosure denial;
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Commission shall respond to the written appeal. The Commission shall not issue more than 1 notice of extension for a particular written appeal.

If the Commission fails to respond to a written appeal, or if the Commission upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court. Whether or not a requestor submitted an appeal of a denial to the Commission, he or she may file a civil action in Gogebic County Circuit Court within 180 days after the Commission's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the Commission to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Commission prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the Commission has arbitrarily and capriciously violated FOIA by refusal or delay in disclosing or providing copies of a public record, the court shall order the Commission to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the Michigan Treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 9: Appeal of an Excessive FOIA Processing Fee

"Fee" means the total fee or any component of the total fee calculated under MCL 15.234, including any deposit. If a requestor believes that the fee charged by the Commission to process a FOIA request exceeds the amount permitted by the law or under this policy, he or she must first appeal to the Commission by submitting a written appeal for a fee reduction to the office of the Executive Director. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The Commission is not considered to have received a written appeal until the first regularly scheduled Commission meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the Commission 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;
- 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 Commission will respond to the written appeal. The Commission shall not issue more than 1 notice of extension for a particular written appeal.

Where the Commission reduces or upholds the fee, the determination must include a certification from the Commission that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the Commission's determination of an appeal, the requesting person may commence a civil action in Gogebic County Circuit Court for a fee reduction. If a civil action is commenced against the Commission for an excess fee, the Commission is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless *one* of the following applies:

- The Commission does not provide for appeals of fees;
- The Commission failed to respond to a written appeal as required; or
- The Commission issued a determination to a written appeal.

If a court determines that the Commission required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of 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. The award shall be assessed against the public body liable for damages.

If the court determines that the Commission has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Commission to pay a civil fine of \$500.00, which shall be deposited in the general fund of the Michigan 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 fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with prior FOIA policies promulgated by Commission or the Commission administration, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this policy is found to be in conflict with any previous policy promulgated by the Commission or the Commission administration, 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 Michigan statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the Commission or the Commission administration, 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 FOIA; provided that such

modifications and rules are consistent with the law. The FOIA Coordinator shall inform the Commission of any change to these Policies and Guidelines.

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

Section 11: Appendix of the Ironwood Housing Commission FOIA Forms

- Request for Public Records Form
- Detailed Cost Itemization Form