

EXHIBIT A TO RESOLUTION ADOPTED ON APRIL 19, 2016

VILLAGE OF CALUMET FOIA PROCEDURES AND GUIDELINES

Preamble: Statement of Principles

It is the policy of the Village of Calumet (hereinafter “the Village”) that all persons, except those 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 Village’s policy with respect to FOIA requests is to comply with State 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 Village acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Village acknowledges that at times 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 Village will protect the public’s interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Village’s policy is to disclose public records consistent with and in compliance with State law.

The Village has established the following written procedures and guidelines to implement the FOIA. In addition, the Village has created a written public summary (hereinafter “the Written Public Summary”) of the specific procedures and guidelines directed to the general public regarding how to submit written requests to the Village and explaining how to understand the Village’s written responses, deposit requirements, fee calculations, and appellate procedure.

As used in this document, “the Village” includes all agencies and departments of the Village.

Section 1: General Policies

The Village, acting pursuant to the authority at MCL 15.236, designates the Village Clerk as the FOIA Coordinator for the Village. He or she is authorized to designate others to act on his or her behalf to accept and process written requests for review and or copies of the public records of the Village 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 Village spam or junk-mail folder, the request is not deemed to be 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 when the request was delivered to the spam or junk-mail folder and the date when the FOIA Coordinator became aware of the request.

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.

The Village is not obligated to create a new public record or make a compilation or summary of information which does not already exist. The FOIA Coordinator shall keep a copy of all written requests for public records received by the Village on file for a period of at least one year.

The Village will make this Procedures and Guidelines document and the Written Public Summary publicly available on request without charge. Copies of the Procedures and Guidelines document and Written Public Summary are available without charge upon request by visitors at the Village office located at the Village Hall, 340 Sixth Street, Calumet, Michigan 49913.

Section 2: Requesting a Public Record

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

Requests for incident reports, accident, and traffic crash reports made or maintained by the Village Police Department may be directed to the Village Police Department, 340 Sixth Street, Calumet, Michigan 49913. All other requests should be directed to the office of the Village Clerk.

Upon their receipt or discovery, misdirected 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 provided to him or her in digital form in lieu of paper copies. The Village 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 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 Village 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.

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

- (1) Grant the request.
- (2) Issue a written notice denying the request.
- (3) Grant the request in part and issue a written notice denying in part the request.
- (4) Issue a notice indicating that due to the nature of the request the Village needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- (5) Issue a written notice indicating that the public record requested is available at no charge on the Village's website, if such a website exists. On the date of adoption of these Procedures and Guidelines, the Village has no website.

When a request is granted:

If the request is granted, or granted in part, the FOIA Coordinator shall 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. Provided, however, if the Village has a website and these Procedures and Guidelines and the Written Public Summary are maintained on the Village's website, a link to these documents may be provided in lieu of providing paper copies of them.

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 may 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 Village 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 Village to process the request and also provide a best efforts estimate of a time frame that it will take the Village to provide the records to the requestor. The best effort estimate shall be nonbinding on the Village, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance and so as to provide the requested records in a manner based on the public policy expressed in Section 1 of the FIOA.

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:

- (1) An explanation as to why a requested public record is exempt from disclosure; or
- (2) 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 Village; or
- (3) An explanation or description of the public record or information within a public record that is separated or deleted from the public record: and
- (4) An explanation of the right to receive damages of \$1000, should they prevail in Circuit Court.
- (5) 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 the timelines described in this Section.

Requests to inspect public records:

The Village 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 Village records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Village operations. Requests for examination and inspection are subject to fees as provided by the Act.

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 not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the Village in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator shall 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:

- (1) The final fee for the prior written request is not more than 105% of the estimated fee;
- (2) The copies of public records made available contained the information sought in the prior written request and remain in the Village's possession;

- (3) The copies of public records were made available to the individual, subject to payment, within the time frame estimated by the Village to provide the records;
- (4) Ninety days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- (5) The individual is unable to show proof of prior payment to the Village; and
- (6) 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:

- (1) The person making the request is able to show proof of prior payment in full to the Village;
- (2) The Village is subsequently paid in full for the applicable prior written request; or
- (3) Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the Village.

Section 5: Calculation of Fees

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 Village because of the nature of the request in the particular instance, and the Village 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 Village's usual FOIA requests, not compared to the Village's operation 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 Village:

- (1) The volume of the public record requested.
- (2) The amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- (3) Whether the public records are from more than one Village department or whether various Village offices are involved with the response to the request.
- (4) The available staffing required for responding to the request.

(5) Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Village may charge for the following costs associated with processing a request:

(1) Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the internet.

(2) Labor costs associated with searching for, locating and examining a requested public record (including labor costs incurred for supervision during a requestor's review of the public record).

(3) Labor costs associated with a review of a record to separate and delete information exempt from disclosure.

(4) 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 Village's website (if such a website exists) if the requestor asks for the Village to make copies.

(5) The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for copies of records in non-paper physical media. This may include the cost for copies of records already on the Village's website if the requestor asks the Village to make copies.

(6) The cost to mail or send a public record to a requestor.

Labor costs shall be calculated as follows:

(1) All labor costs will be estimated and charged in 15 minute increments, with all partial time increments rounded down.

(2) Labor costs will be charged at the hourly wage of the lowest-paid full-time Village employee capable of doing the work in the specific fee category, regardless of who actually performs the work.

(3) The Village 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.

(4) 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.

The cost to provide copies of records on non-paper physical media when so requested will be calculated as follows:

(1) The cost of providing 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 involved.

(2) This cost will only be assessed if the Village has the technological capability necessary to provide the public record in the requested non-paper format.

(3) The Village will procure any non-paper media used in providing copies of public records and will not accept media from the requestor, all so as to insure the integrity of the Village's software and hardware.

The cost to provide paper copies of records will be calculated as follows:

(1) Paper copies of public records made on standard letter (8½" x 11") or legal (8½" x 14") sized paper will not exceed \$0.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.

(2) The Village may provide records using double-sized printing if this is cost-saving and available.

The cost to mail records to a requestor will be calculated as follows:

(1) The actual cost to mail public records using a reasonably economical and justified means.

(2) The Village may charge for the least expensive form of postal delivery confirmation.

(3) No charge will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Village must:

(1) Reduce the labor costs by 5% for each day the Village exceeds the time permitted under FOIA up to a 50% maximum reduction if any of the following applies:

(a) The Village's response was willful and intentional;

(b) 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

(c) 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.

- (2) 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.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator 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 he or she is:

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

An individual is not eligible to receive this waiver if:

- (1) The requestor has previously received discounted copies of public records for the Village twice during the calendar year; or
- (2) 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. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public for this purpose.

Nonprofit organization advocating for developmentally disable or mentally ill individuals

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the State to carry out activities under Subtitle C of the Federal 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 successor legislation, if the request meets all of the following requirements:

- (1) It is made directly on behalf of the organization or its clients;

(2) It is made for a reason wholly consistent with the mission and provisions of those laws under Section 391 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and

(3) It is accompanied by documentation of its designation by the State, if requested by the Village through its FOIA Coordinator.

Section 8: Appeal of a Denial of a Request for Review or Copies 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 President of the Village Council by filing an appeal of the denial with the FOIA Coordinator. The appeal must be in writing, specifically state the word, “appeal,” and identify the reason or reasons for the requestor’s appeal.

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

- (1) Reversing the disclosure denial;
- (2) Upholding the disclosure denial;
- (3) Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- (4) Under unusual circumstances, issuing a notice extending for not more than 10 business days the period during which the President of the Village Council shall respond to the written appeal. The President of the Village Council shall not issue more than 1 notice of extension for a particular written appeal.

If the President of the Village Council fails to respond to a written appeal, or if the President of the Village Council 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 the Circuit Court for Houghton County.

Whether or not a requestor submitted an appeal of a denial to the President of the Village Council, he or she may file a civil action in the Circuit Court for Houghton County within 180 days after the Village’s final determination to deny the request.

If a court determines that a public record is not exempt from disclosure, it shall order the Village 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 Village prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys’ fees, costs, and disbursement.

If the court determines that the Village has arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a public record, the court shall order the Village to pay a civil fine of \$1000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount or \$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 on a Claim that a FOIA Processing Fee is Excessive

“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 Village to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the President of the Village by submitting a written appeal for a fee reduction to the FOIA Coordinator.

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 President of the Village council will respond in writing by:

- (1) Waiving the fee;
- (2) Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- (3) Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- (4) Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the President of the Village Council will respond to the written appeal. The President of the Village Council shall not issue more than 1 notice of extension for a particular written appeal.

Where the President of the Village Council reduces or upholds the fee, the determination must include a certification from the President of the Village Council 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 determination on appeal made by the President of the Village Council, the requesting person may commence a civil action in the Circuit Court for Houghton County for a fee reduction. If a civil action is commenced against the Village for an

excessive fee, the Village 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 conditions applies:

- (1) The President of the Village Council failed to respond to a written appeal as required, or
- (2) The President of the Village council issued a determination on a written appeal.

If a court determines that the Village 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 by 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 for damages.

If the court determines that the Village has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Village 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 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 previous FOIA policies promulgated by the Village, 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 Village, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provisions 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 Village and to adopt Cost Worksheets and administrative rules as he or she may deem necessary or convenient 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 president and Village Council of any changes to these Procedures and Guidelines or the Written Public Summary.

These FOIA Policies and Guidelines are effective on April 19, 2016.