



ALLEGAN CONSERVATION DISTRICT

"The Allegan Conservation District is dedicated to helping all land users wisely manage the natural resources of Allegan County."

FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES AND GUIDELINES

APPROVED BY: Allegan Conservation District Board of Directors (August 20, 2018)

EFFECTIVE DATE: September 1, 2018

PURPOSE:

The Michigan Freedom of Information Act, Public Act 442 of 1976 ("FOIA"), mandates disclosure of public records. To fulfill this mandate, The Allegan Conservation District Board of Directors ("Directors") has established this policy and procedure for handling FOIA requests to ensure that members of the public receive non-exempt District public records that they may request, while no unduly burdening the District.

FOIA COORDINATOR:

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

PROCEDURES:

Submitting Requests

FOIA requests to the District may be submitted by the following means:

Mail: Allegan Conservation District
Atten: FOIA Coordinator
1668 Lincoln Road
Allegan, MI 49010

E-mail: allegan.admin@macd.org

A "FOIA Request for Public Records" form (see Appendix) will be provided by the District to a requestor and must be used to submit a FOIA request.

Requests should sufficiently describe the public record by name, time frame, and other relevant information to enable the FOIA Coordinator to identify and locate the record.

Requests should also include the name of the requestor, phone number, mailing address, and e-mail address. Additional identifying information may be requested in order to complete a search for the requested records.

Requests for Public Records

All requests for public records (either to receive copies of such records or to inspect such records) made pursuant to FOIA shall be made in writing via the methods and format described above. All written requests for records pursuant to FOIA shall be processed by the FOIA Coordinator or designee.

Allegan Conservation District | 1668 Lincoln Road, Allegan, MI 49010
(269) 673-6940, ext. 5 | allegan.admin@macd.org

Non-Paper Media

A requester may ask that public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. The District shall not be required to comply with such a request if it lacks the capability to provide the requested records in non-paper media form in the particular instance, and the requestor shall be so informed.

Requests to Review Records

If a request is received to review records, arrangements shall be made available to inspect records during the District's normal business hours and when the records can reasonably be made available. The person who wishes to inspect public records shall submit a request in writing as described above prior to the District allowing the inspection of the records. A District staff member shall be present at all times during the inspection of District records if any original records are involved.

Requests Made by E-mail

These requests shall be deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made and shall be handled in the same manner as a written request noted above. If the request is submitted by e-mail and the e-mail request is held or quarantined in the District's spam or junk e-mail folder (or other similar virus-protection software), the request shall be deemed received one business day after the District first became aware of the request.

Any employee of the District who receives a written request for a public record must immediately forward that request to the FOIA Coordinator. If a District employee receives an electronic request for a public record that is delivered to a spam or junk folder, the employee must record the date and time the electronic request was delivered to the spam or junk-mail folder and date and time the employee first became aware of the electronic request. The employee must forward those dates and times to the FOIA Coordinator with the written request.

PROCESSING FOIA REQUESTS:

Forms for utilization of FOIA procedures under these Procedures and Guidelines are available on the District web site.

The FOIA Coordinator shall keep a copy of all written requests for public records on file for no less than one (1) year.

Time for Response

The FOIA Coordinator shall, no more than five (5) business days after the request has been made, unless a single extension of not more than ten (10) business days has been issued, or where the time limits have been agreed to upon in writing by the requesting person, provide one of the following responses:

Grant the Request. If the requested public records are not exempt from disclosure, the FOIA Coordinator shall submit copies of them to the requestor, together with a copy of the District's "FOIA Request Response Form" (see Appendix) and a copy of the requestor's FOIA request.

Deny the Request. The FOIA Coordinator shall sign and send a "Notice of Denial of FOIA Request" form (see Appendix) to the requestor, stating the reasons for denial, including an explanation of the requestor's right to seek a non-mandatory appeal of the FOIA Coordinator's decision to the District Board of Directors. Failure to timely respond to the request constitutes a denial. Denial may be made because, among other reasons, the record does not exist, it cannot be sufficiently identified from the description contained in the request, or the record is exempt from disclosure.

Grant the Request in Part and Deny the Request in Part. Public records which are partially exempt and partially subject to disclosure shall be separated or redacted, and the non-exempt material will be offered

for copying or inspection. A general description of the separated or redacted information shall be provided to the requestor, unless doing so would reveal the contents of the exempt information. The FOIA Coordinator shall sign and send a letter to the requestor, stating the reasons why access to some of the requested records is denied, including an explanation of the requestor's right to seek a non-mandatory appeal of the FOIA Coordinator's decision to the District Board of Directors.

Extension. The FOIA Coordinator may an extension of up to ten (10) business days. The notice shall state the reason for the extension and include an estimate as to when the FOIA Coordinator expects to respond to the FOIA request.

GENERAL REQUIREMENTS FOR FOIA RESPONSE:

FOIA requests shall be fulfilled in one or more of the following ways, depending on the request:

- a. If inspection of records is requested, the District will provide a reasonable opportunity and facilities for inspection of the public records by the requesting person.
- b. Original records shall not be marked, defaced, destroyed, or otherwise altered. A person examining public records may take notes and if so, shall bring to the examination only an erasable pencil with which to make notes. No pens or indelible writing instruments are allowed. No notes, marks or writing of any kind shall be made on the records themselves.
- c. A District staff member shall be present at all times during the inspection of District records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the District's cost of this monitoring service, a fee shall be paid to the District for the personnel time involved, as provided for in these Procedures and Guidelines.
- d. Original records shall not be removed from the location provided for inspection. Original documents may be removed from and replaced in District files only by authorized District personnel.
- e. A requesting person may not remove records or files from the area provided for inspection. Copying of records for the requesting person shall be conducted only by authorized District personnel.
- f. In some special situations in which inspection of records is requested, the FOIA Coordinator may determine, on a case-by-case basis, that only a copy of the record may be inspected. Situations where original records are likely to require copying prior to inspection include the following:
 - (1) The records include exempt information that must be redacted.
 - (2) The records are old or delicate or contain information that could not easily be replicated.
 - (3) The records are in digital format or are part of a database not available for public inspection.
- g. A person requesting to inspect District records must make an appointment with the FOIA Coordinator. Appointments will be scheduled during the District's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator.
- h. The FOIA Coordinator will make reasonable efforts to allow a requesting person to inspect records for up to four hours per appointment; provided, however, that inspections will be cut short, postponed or rescheduled when necessary to avoid unreasonable interference with District staff's duties and responsibilities.
- i. Provide copies of records if so requested.
- j. The FOIA does not require the District to make a compilation, summary or report of the requested public records or other requested information.

ASSESSMENT OF FEES FOR FOIA REQUEST

The FOIA permits the District to charge the requestor a fee for labor costs, copies, mailing and other costs associated with responding to the request for public records. If it takes less than fifteen (15) minutes to

respond to the FOIA request, there shall be no fee. For any requests requiring more than fifteen minutes of staff time, the following fee guidelines for calculating labor and material costs will be followed:

- a. *Labor cost to Search, Locate and Examine Records.* The District may charge for the labor costs directly associated with searching for, locating, and examining public records in conjunction with receiving and fulfilling a FOIA request.
- b. *Labor cost to Review, Separate and Delete Exempt from Non-Exempt Records.* The District may charge for the labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt material from non-exempt material. The review and separation of exempt from non-exempt material may be conducted by a District official or employee or, if necessary, outside legal counsel.
- c. *For services performed by an outside contractor or legal counsel.* As determined by the FOIA Coordinator on a case-by-case basis, the District may charge the contractor's or legal counsel's time, provided, however, that such time to be charged shall not exceed an amount equal to six (6) times the then-current State minimum hourly wage rate determined under Section 4 of the Workforce Opportunity Wage Act, Act 138 of the Public Acts of Michigan of 2014 ("Act 138"), as that rate may change from time to time. If the rate increases under Act 138, the rate charged under these Procedures and Guidelines shall automatically change without action by the District Board of Directors or amendment of these Procedures and Guidelines. In charging such time for an outside contractor or legal counsel, the District shall provide notice to the requesting person of the name of the contracted person or firm in the District's detailed itemization of costs required by the Act. The charges for such services will be billed in increments of fifteen (15) minutes or more and all partial time increments will be rounded downward.
- d. *Labor cost of Duplication of Records.* The District may charge for the labor costs directly associated with duplication of records, including making paper copies, making digital copies, or transferring digital public records to be given to the requesting person on non-paper physical media or through the Internet or other electronic means as stipulated by the requesting person.
- e. *Copying Charges.* Duplication of public records and documents will be at the rate of \$.05 per page for black and \$.10 per page for color copies.
- f. *Cost of Non-paper Media.* The District may charge for the cost of CDs, DVDs, thumb drives or other electronic media materials needed to fulfill a request.
- g. *Cost of Mailing.* The District will charge the actual cost of postage for sending records to the requesting person.
- h. *Labor cost of Monitoring Inspection of Records.* The District may charge for time to monitor a requester inspecting original records. Note: Section 3(3) of the FOIA, MCL 15.233(3), provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."

The fees will be calculated on a "FOIA Fee Calculation Form" (see Appendix), and a copy of the form will be provided to the requestor before further processing of the request is completed.

Calculation of Labor Costs. The District will calculate labor costs using the hourly wage of the District's lowest paid employee capable of performing the required task, whether or not they are available or actually perform the labor. Such labor costs shall be estimated and charged in increments of fifteen (15) minutes with all partial increments rounded down. The hourly wage will be based on the District's payroll records for the applicable fiscal year. Labor costs shall also include up to 50% of the hourly wage to partially cover the cost of fringe benefits, not to exceed the actual cost of the benefits.

If a requester submits an affidavit of indigence, the first \$20.00 of a fee will be waived (up to two waivers a calendar year).

Deposit Requirements. If there is no fee for the request, the record will be sent to the requestor when complete. If the District estimates the fee to be less than \$50.00, the requestor will be notified that the record

will be available once the applicable payment is received. If the fee is anticipated to be more than \$50.00, the requestor will be notified that the request will be processed once a deposit equal to 50% of the anticipated fee is received.

EXEMPTIONS TO FOIA REQUEST

The FOIA coordinator may exempt from disclosure any records identified as exempt from disclosure in Section 13 of the FOIA:

- a. That portion of any public record disclosing a person's social security number.
- b. Information protected under the Family Educational Rights and Privacy Act of 1974.
- c. Minutes of any closed session meeting, disclosure of which is prohibited by the Open Meeting Act.
- d. Any other public meeting record, information or material, the disclosure of which is prohibited by law.

APPEALS

Appeal of Denial of Request

If a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the following:

The appeal must be submitted in writing to the District Board of Directors, to the attention of the Chairman of the Board.

The written appeal must specifically state the word "appeal" and identify the reason or reasons advanced for the reversal or modification of the denial.

If a written appeal is received by the Chairman of the Board of Directors consistent with these Procedures and Guidelines, and the Act, the Board shall either:

- a. place the appeal on the agenda for the next regularly scheduled meeting, to be decided within ten (10) business days thereafter; or
- b. schedule a special meeting to consider the appeal, a special meeting should be held no later than ten (10) business days following the next regularly scheduled meeting.

The District Board of Directors may deliberate and shall take one of the following actions in response to the filing of an appeal:

- a. Reverse the denial.
- b. Affirm the denial and issue a written notice to the requesting person.
- c. Reverse the denial in part and issue a written notice to the requesting person affirming the denial in part.
- d. Under unusual circumstances, issue a notice extending not more than the (10) business days the period during which the Board shall respond to the written appeal. Only one written notice extending the response time is allowed.

The Board's decision on the appeal will be recorded on a "FOIA Request Response Form" (see Appendix), with a copy provided to the requestor.

Fee Appeal

A requesting person may appeal the amount of a fee or deposit if that fee or deposit exceeds the amount permitted under these Procedures and Guidelines and the FOIA. An appeal on the amount of the fee may be made to the District Board of Directors in accordance with the provisions of *Appeal of Denial of Request*, above.

In the fee appeal, the requesting person must specifically include the word “appeal” and identify how the required fee exceeds the amount permitted under these Procedures and Guidelines or the Act.

If a written appeal is received by the Chairman of the Board of Directors consistent with these Procedures and Guidelines, and the Act, the Board shall do one of the following:

- a. Waive the fee.
- b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of FOIA and these Procedures and Guidelines that supports the remaining fee. The determination shall include a certification from the Chairman of the Board of Directors, on behalf of the District Board, that the statements in the determination are accurate and that the reduced fee amount complies with the District’s Procedures and Guidelines, and Section 4 of the Act.
- c. Uphold the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Chairman of the Board of Directors, on behalf of the District Board, that the statements in the determination are accurate and that the fee amount complies with the District’s Procedures and Guidelines, and Section 4 of the Act.
- d. Issue a notice extending for not more than ten (10) business days the period during which the District Board of Directors must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. Only one written notice extending the response time is allowed.

In accordance with FOIA, the District Board of Directors is not considered to have received a written fee appeal until the first regularly scheduled meeting of the Board following submission of the written appeal.

In accordance with Section 4(13) of FOIA, a deposit required to be paid by the District is considered a “fee”.

The Board’s decision on the appeal will be recorded on a “FOIA Request Response Form” (see Appendix), with a copy provided to the requestor.

AMENDMENTS TO PROCEDURES

The District Board of Directors may amend or supplement this policy, from time to time, in the Board’s sole discretion.

APPENDIX

This Appendix includes the following forms related to the District's FOIA Policy:

- FOIA Request for Public Records
- FOIA Request Response Form
- FOIA Fee Calculation Form
- Public Summary, Freedom of Information Act Procedures and Guidelines

ALLEGAN CONSERVATION DISTRICT

1668 Lincoln Road. Allegan, MI 49010

FOIA REQUEST RESPONSE FORM

REQUEST No.:	REQUESTOR NAME:
DATE RECEIVED:	DATE RESPONSE REQUIRED:
DATE REQUEST COMPLETED:	COMPLETED BY:
DISTRICT RESPONSE	
<input type="checkbox"/> Request Granted. Records requested are attached. <input type="checkbox"/> Record Inspection _____ (date) <input type="checkbox"/> Request Denied. Please see attached denial letter. <input type="checkbox"/> Request Granted in Part. Please see attached letter of explanation. <input type="checkbox"/> Extension issued to _____ (date)	
DELIVERY METHOD	
<input type="checkbox"/> Pick-up <input type="checkbox"/> Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Digital Media <input type="checkbox"/> Other, specify: _____	
DATE FEE CALCULATION FOR PROVIDED TO REQUESTOR: _____	
FEE DEPOSIT RECEIVED	BALANCE OF FEES DUE RECEIVED
Date: _____ Amount: \$ _____	Date: _____ Amount: \$ _____ Paid in Full? <input type="checkbox"/> Yes <input type="checkbox"/> No
SUMMARY OF APPEAL(S)	
APPEAL OF REQUEST DENIAL	APPEAL OF EXCESS FEE
DATE APPEAL RECEIVED:	DATE APPEAL RECEIVED:
DATE OF BOARD REVIEW:	DATE OF BOARD REVIEW:
BOARD ACTION	BOARD ACTION
<input type="checkbox"/> Reverse denial <input type="checkbox"/> Affirm denial <input type="checkbox"/> Reverse in part, affirm in part <input type="checkbox"/> Issue extension to: _____ (date) Date provided to Requestor: _____	<input type="checkbox"/> Waive fee <input type="checkbox"/> Reduce fee <input type="checkbox"/> Uphold fee <input type="checkbox"/> Issue extension to: _____ (date) Date provided to Requestor: _____

ALLEGAN CONSERVATION DISTRICT

1668 Lincoln Road. Allegan, MI 49010

FOIA FEE CALCULATION FORM

REQUEST No.: _____ **REQUESTOR NAME:** _____ **DATE:** _____

ESTIMATED COSTS		TOTAL	ACTUAL COSTS	TOTAL
Labor: Search, Locate, Examine	# of hours ___ × wage rate \$____.	\$	# of hours ___ × wage rate \$____.	\$
Labor: Review, Separate, Delete	# of hours ___ × wage rate \$____.	\$	# of hours ___ × wage rate \$____.	\$
Labor: Contractor	# of hours ___ × wage rate \$____.	\$	# of hours ___ × wage rate \$____.	\$
Labor: Duplicating	# of hours ___ × wage rate \$____.	\$	# of hours ___ × wage rate \$____.	\$
Paper Copies	Black: # of pages ___ × \$.05/page	\$ _____	Black: # of pages ___ × \$.05/page	\$ _____
	Color: # of pages ___ × \$.10/page	\$ _____	Color: # of pages ___ × \$.10/page	\$ _____
Non-paper Physical Media	Media type: _____ (#) ___ × \$____.	\$	Media type: _____ (#) ___ × \$____.	\$
Mailing		\$		\$
Labor: Monitoring of Records Inspection	# of hours ___ × wage rate \$____.	\$	# of hours ___ × wage rate \$____.	\$
Additional Fees:				
		\$ _____		\$ _____
		\$ _____		\$ _____
		\$ _____		\$ _____
ESTIMATED SUB-TOTAL		\$	SUB-TOTAL:	
Indigent Waiver (\$20)		\$	Indigent Waiver	\$
ESTIMATED TOTAL:		\$	TOTAL:	
50% Deposit		\$	Less Deposit:	\$
			BALANCE DUE:	
				\$

ALLEGAN CONSERVATION DISTRICT

1668 Lincoln Road. Allegan, MI 49010

PUBLIC SUMMARY FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES AND GUIDELINES

HOW TO SUBMIT REQUESTS

FOIA requests to the Allegan Conservation District may be submitted by the following means:

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Requests should sufficiently describe the public record by name, time frame, and other relevant information to enable the FOIA Coordinator to identify and locate the record.

Requests should also include the name of the requestor, phone number, mailing address, and e-mail address. Additional identifying information may be requested in order to complete a search for the requested records.

HOW TO UNDERSTAND THE DISTRICT’S RESPONSE TO FOIA REQUESTS

The District has several options when responding to written requests for public records:

1. It can grant the FOIA request,
2. Deny the FOIA request,
3. Grant it in part and deny it in part,
4. Or take one ten (10) business day extension. After ten business days pass, the District has to respond with one of the other options.

If the request is granted or granted in part and denied in part, the District can also charge a fee to process the request. Fees are calculated using its Procedures and Guidelines. The Requestor will receive a detailed itemization of the fees. The District may require a deposit before processing a request. After the deposit and final balance due are paid in full, the District will produce records in its possession that fall within the scope of the requested information and that legally may be disclosed to the public. The District may also notify the Requestor that some of the records are available on its website.

If the request is denied, the District will inform the Requestor for the basis for its denial in a written notice. Reasons the District may deny a request include:

1. The Requestor did not describe the records request well enough the District cannot determine what the Requestor is looking for.
2. The District has determined that it does not have records that respond to the Requestors request in its possession.
3. The records being requested are exempt from public disclosure.

FEE DEPOSIT REQUIREMENTS

If there is no fee for the request, the record will be sent to the requestor when complete. If the District estimates the fee to be less than \$50.00, the requestor will be notified that the record will be available once the applicable payment is received. If the fee is anticipated to be more than \$50.00, the requestor will be notified that the request will be processed once a deposit equal to 50% of the anticipated fee is received.

FEE CALCULATIONS

The FOIA permits the District to charge a fee to process FOIA requests using a form available on the District's webpage. The District will charge for the following costs:

1. The cost of labor for search, location, and examination of public records;
2. The cost of labor for reviewing, separating, and deleting of exempt from non-exempt public records;
3. The cost of service performed by an outside contractor;
4. The cost of duplication and publication of public records;
5. The cost of copying public records;
6. The cost of non-paper physical media;
7. The actual cost of mailing public records;
8. The cost of labor to monitor an inspection of public records.

CHALLENGING AND APPEALING DENIALS

If the District denies all or part of a request; OR charges a fee amount you believe is too high, you may submit to the District Board of Directors a written appeal that specifically states the word "appeal" and identifies the basis for which the disclosure determination should be reverse, or fee should be reduced.

Written appeals may be sent to the mailing address or e-mail address listed above and will be forwarded to the Board of Directors for a response.

QUESTIONS

If you have any questions regarding the District's Freedom of Information Act Procedures and Guidelines, contact the Conservation District FOIA Coordinator.