PROCEDURE #1.4A		EFFECTIVE DATE	REVISED DATE
TITLE:	FREEDOM OF INFORMATION ACT	March 17, 2016	
ATTACHMENT TO		REVIEW DATES	
POLICY #:	1.4		
POLICY TITLE:	FREEDOM OF INFORMATION ACT (FOIA)		
CHAPTER:	GENERAL MANAGEMENT		

I. PURPOSE

Lakeshore Regional Entity ("**LRE**"), as a community mental health authority and public governmental body pursuant to the Michigan Mental Health Code ("**MHC**") and the Michigan Freedom of Information Act ("**FOIA**"), will ensure that all persons are granted full and complete information as required by FOIA. The statutory authority for this policy is the **Michigan Mental Health Code** (Michigan Compiled Laws, Chapter 330, Section 1001 through 2106) and the **Michigan Freedom of Information Act** (Michigan Compiled Laws, Chapter 15, Section 231 through 246).

The following definitions apply in this procedure:

"**Public Record**" means a writing prepared, owned, used, in the possession of, or retained by LRE in the performance of an official function, from the time it is created. Public record does not include computer software.

"**Unusual circumstances**" means any one or combination of the following, but only to the extent necessary for the proper process of a request: (1) the need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request; or (2) the need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

II. PROCEDURES

Request for a Public Record. Any person ("**Requestor**") can submit a request to inspect, copy or receive copies of a requested Public Record from LRE by submitting a completed Request Form. The Request Form must include the Requestor's complete name, address, and contact information (including a valid mailing address, email address, and telephone number). If the Requestor is an entity, then the Requestor must designate a real person to serve as a point of contact. The Requestor must describe the Public Record sufficiently to enable LRE's FOIA Coordinator (the "**FOIA Coordinator**") to find the record.

Written Requests. Requests may be submitted by mail or in person to LRE at 5000 Hakes Dr., Norton Shores, MI 49441, by fax to 888-409-9320, or by email to foia@lsre.org . Requests may be submitted verbally to an LRE employee. An employee who receives a verbal request shall submit it in writing to the FOIA Coordinator or, if the requested information is available on LRE's website, the employee will, when practical, provide the Requestor with the appropriate website address.

Compilations, Summaries, or Reports; Certified Copies. LRE will not make a compilation, summary, or report of information from its Public Records, even if requested. LRE will issue a certified copy of a Public Record if requested.

No New Public Records. LRE will not create new Public Records, except for furnishing copies or edited copies of already-existing Public Records. A new public record is not created by redacting information from existing records.

Receipt by FOIA Coordinator. A request is deemed to have been received one (1) business day after the Request Form is submitted. If a Request Form submitted electronically goes to the FOIA Coordinator's spam or junk folder, the request is deemed to have been received on the day LRE or the FOIA Coordinator becomes aware of the request. In this situation, the FOIA Coordinator will record both (1) the day he/she became aware and (2) the day the Request Form was actually received. The FOIA Coordinator will retain a copy of all Request Forms for one (1) year from receipt.

Review. After receiving a request, prior to the below deadlines, the FOIA Coordinator will determine (1) if there is an existing Public Record that satisfies the request and (2) if any requested records, in whole or in part, are subject to denial or exempt from disclosure.

Denial of Request. A request will be denied if:

- the requested Public Records are exempt from disclosure;
- the Requestor is serving a sentence of imprisonment in a local, state, or federal correctional facility;
- the Requestor does not describe the Public Record sufficiently to enable LRE to locate the Public Record;
- it requires LRE to create a new Public Record or to make a compilation, summary, or report of information; or
- such denial is otherwise required or permitted by applicable law.

Exemptions from Disclosure. LRE will not disclose information that is otherwise exempt from disclosure pursuant to applicable law, including but not limited to MCL § 15.243.

Response. Unless the Requestor agrees to a different response date, the FOIA Coordinator (or his or her designee) will provide a response within five (5) business days following receipt of a valid request. The FOIA Coordinator will respond in writing and shall (1) grant the request,

(2) deny the request; (3) grant the request in part and deny the request in part, or (4) extend the time period for response for up to ten (10) business days.

If a request is granted, LRE will provide an ***estimate*** of the amount of time needed to produce the records. The actual response time may exceed this estimate. If the request is denied in whole or in part, the FOIA Coordinator will complete and sign the Denial Form and provide it to the Requestor, including:

- An explanation of why the Public Record is exempt from disclosure; or
- A certificate that the Public Record does not exist under the name or description provided by the Requestor, or another name reasonably known by LRE; and
- An explanation or description of the Public Record or information within the Public Record that is separated or deleted from the Public Record; and
- An explanation of the Requestor's right to appeal the denial or seek judicial review; and
- An explanation of the Requestor's right to receive attorneys' fees, costs, disbursements, actual or compensatory damages, and punitive damages of one thousand dollars ($1,000), should the Requestor prevail in judicial review.

The Denial Form is LRE'S final determination to deny the request in whole or in part.[1] If LRE extends the time period for response, LRE will provide the Requestor with the Extension Form specifying the reasons for the extension and the date by which LRE will respond.[2]

Inspection of Public Records. If the Requestor wants to inspect Public Records, the FOIA Coordinator will offer an opportunity to inspect and examine the Public Records on-site at a designated LRE facility. The inspection must occur during LRE's usual business hours and be scheduled in advance with the FOIA Coordinator.[3]

Redaction. If a Public Record contains both exempt and nonexempt material, the FOIA Coordinator shall edit the record by deletion, masking or separation, ultimately providing only the nonexempt material to the Requestor. The FOIA Coordinator shall generally describe the redacted material unless the description would reveal its contents.

[1] NTD: Per FOIA, failure to respond to a request constitutes a final determination to deny the request if the failure was (a) willful or intentional or (b) the written request included language that conveyed a request for information within the first 250 words of the letter, fax, email, etc.

[2] NTD: Per FOIA, the notice must specify the reasons for the extension and the date by which the public body will (a) grant the request; (b) issue a written notice to the Requestor denying the request; or (c) grant the request in part and issue a written notice to the Requestor denying the request in part. Denial must be signed by the person responsible for denying.

[3] NTD: LRE is permitted to make "reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions." LRE also has a responsibility to protect its public records from loss, unauthorized alteration, mutilation, or destruction. Client to determine whether additional rules or restrictions can be implemented here.

Website link to Written Public Summary. LRE will maintain this Procedure and its Written Public Summary online and provide a link to these documents with the response to each request. LRE will also provide free hard copies upon request.

Fees for Public Records. The FOIA Coordinator will calculate a fee estimate based on the Cost Itemization Form and will provide the estimate and the form itself to the Requestor. If the request is granted, the Requestor must pay any fees associated with the request **before** LRE provides responsive records. If a request is granted and the estimated fees exceed fifty dollars ($50), the Requestor must provide a deposit of fifty percent (50%) of such estimated fees **before** LRE provides responsive records. In addition, if a Requestor, who has not paid for copies of Public Records received in response to a previous written request, chooses to make a subsequent written records request and all the below conditions are met, the Requestor will be required to deposit one-hundred percent (100%) of the estimated fees **before** LRE begins searching for the newly requested records:

- The final fee for the prior written request is not more than one-hundred five percent (105%) of the estimated fee for that request; and
- The Public Records made available in the prior written request contained the information sought in that request and remain in LRE's possession; and
- The Public Records were made available to the individual, subject to payment, within the time frame estimated by LRE; and
- Ninety (90) days have passed since the FOIA Coordinator notified the Requestor in writing that the Public Records were available; and
- The Requestor is unable to show proof of prior payment to LRE; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the increased estimated fee deposit.

The additional deposit shall not apply if three-hundred sixty-five (365) days have passed since the Requestor made the previous request.

Calculation of Fees. Request fees include (1) labor costs plus (2) materials costs, minus applicable deductions, as set forth below.

Labor Subject to Cost. The Requestor must pay for the following labor charges, if applicable:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital records to non-paper 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 LRE; and
- Labor costs associated with a review of records to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to LRE.

- The following factors determine an unreasonably high cost to LRE: volume of the Public Record requested; amount of time required to search for, examine, review, and delete and/or separate exempt from non-exempt information in the record requested; whether the Public Records are from more than one LRE department or whether various LRE offices are necessary to respond to the request; the available staffing to respond to the request; or any other factors identified by the FOIA Coordinator in responding to the particular request.

Calculation of Labor Costs. Labor costs will be calculated as follows:

- All labor costs will be estimated and charged in fifteen (15) minute increments, with all partial time increments rounded down, except that labor costs for duplication or publication will be charged in [one (1) minute][4] increments, with all partial increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid LRE 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 for the employee who performs the work. Such charge will be up to fifty percent (50%) of 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 wages will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at an hourly rate not to exceed an amount equal to six (6) times the state minimum hourly wage rate determined by the Workforce Opportunity Wage Act, 2014, PA 138.

Calculation of Non-Paper Physical Media Costs. Computer disks, computer tapes or other digital or similar media will be charged at the actual and most reasonably economical cost for the non-paper media. This cost will only be assessed if LRE has the technological capability necessary to provide the Public Record in the requested non-paper physical media format. LRE will procure any non-paper media and will not accept media from the Requestor in order to ensure integrity of LRE's technology infrastructure.

Calculation of Paper Copy Costs. Paper copies of Public Records made on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper will be as determined by LRE. Copies for non-standard sized paper will reflect the actual cost of reproduction. LRE will provide records using double-sided printing if it saves cost and is available.

Calculation of Mailing Costs. Costs will be calculated based on the actual cost to mail Public Records using a reasonably economical and justified means. LRE may charge for the least

[4] NTD: Incremental time for copying can be determined by the public body or we can make this 15 minutes to simplify the calculation.

expensive form of postal delivery confirmation. No cost will be made for expedited shipping or insurance unless specified by the Requestor.

Reduction of Fees. If the FOIA Coordinator does not respond to a request in a timely manner, LRE will reduce labor costs by five percent (5%) for each day exceeding the time permitted under FOIA, up to a fifty percent (50%) maximum (fully noting this reduction in the Cost Itemization Form), if any of the following apply:

- LRE's late response was willful and intentional;
- The written request conveyed a request for information within the first two-hundred fifty (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.

If a Requestor is indigent, LRE will waive the first twenty dollars ($20) of fees. A Requestor qualifies as indigent if he or she submits an affidavit stating: (1) that he or she is indigent and is receiving specific public assistance (or, if not receiving such assistance, stating facts showing an inability to pay) and (2) that the Requestor is not receiving remuneration from an outside party to make the request. A Requestor is ineligible for this discount if (1) the Requestor has previously received discounted copies of Public Records from LRE twice during the same calendar year, or (2) the request is made in conjunction with outside parties who are offering or providing remuneration in return for the making of such request. The granting of this discount must be fully noted on the Cost Itemization Form, and the denial of this discount requires LRE to provide a specific explanation of the reason for ineligibility in its written response to the Requestor.

If a Requestor is a qualifying nonprofit organization, the FOIA Coordinator will waive the first twenty dollars ($20) of fees. A Requestor is a qualifying nonprofit organization if the Requestor is formally designated by the State of Michigan 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 their successors. For this discount to apply, the request must also meet all of the following criteria:

- Is made directly on behalf of the organization or its clients; and
- 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; and
- Is accompanied by documentation of its designation by the state.

Appeal of Denial of a Request. A Requestor can submit an appeal using the Appeal of Denial Form if the Requestor believes that (1) LRE has not properly disclosed a Public Record or (2) the fees for the request were excessive.

Conflict, Applicability and Responsibility. To the extent that any provision of this Procedure pertaining to the release of Public Records is found to be in conflict with any state statute, the applicable statute shall control. This Procedure applies to all LRE staff and operations.

Additional FOIA Documents:

- Freedom of Information Written Public Summary (the "**Written Public Summary**")[5]
- Request for Public Records Form ("**Request Form**")
- Notice to Extend Response Time Form ("**Extension Form**")
- Notice of Denial Form ("**Denial Form**")
- Detailed Cost Itemization Form ("**Cost Itemization Form**")
- Appeal of Denial Form ("**Appeal of Denial Form**")
- Appeal of Excess Fee Form ("**Appeal of Excess Fee Form**")

III. CHANGE LOG.[6]

Date of Change	Description of Change	Responsible Party
5/1/2025	NEW Procedure	LRE CEO

[5] NTD: The public-facing policy is referred to as a "summary" by FOIA.
[6] NTD: Client to update in accordance with its usual practices.