

## **Village of Suttons Bay**

### **Public Summary of FOIA Procedures and Guidelines**

**It is the public policy of this state 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.**

**The people shall be informed so that they may fully participate in the democratic process.**

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the Village's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the Village's FOIA Procedures and Guidelines. For more details and information, copies of the Village's FOIA Procedures and Guidelines are available at no charge at any Village office and on the Village's website: [www.leelanau.cc/suttonsbayvill.asp](http://www.leelanau.cc/suttonsbayvill.asp).

#### **1. How do I submit a FOIA request to the Village?**

- A request must sufficiently describe a public record so as to enable the Village to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the Village in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Village may be submitted on the Village's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.
  - Any verbal request must be documented.
  - No specific form to submit a written request is required. However a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the Village's website at [www.leelanau.cc/suttonsbayvill.asp](http://www.leelanau.cc/suttonsbayvill.asp), and at the Village Hall.
- Written requests may be delivered to the Village Hall in person or by mail: Village of Suttons Bay, 420 N. Front Street, P.O. Box 395, Suttons Bay, MI 49682.
- Requests may be faxed to: (231) 271-5904. 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: [suttonsbay@suttonsbayvillage.org](mailto:suttonsbay@suttonsbayvillage.org). 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 request?**

- Within 5 business days after receiving a FOIA request the Village 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 Village 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 Village 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 Village's website
- If the request is granted, or granted in part, the Village will ask that payment be made for any 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 Village will require a deposit before processing the request.

## **3. What are the Village's deposit requirements?**

- If the Village has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the Village will require that you provide a deposit in the amount of 50% of the total estimated fee. When the Village 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 Village receives a request from a person who has not paid the Village for copies of public records made in fulfillment of a previously granted written request, the Village will require a deposit of 100% of the estimated processing 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 Village's possession;
  - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the Village to provide the records;
  - Ninety (90) days have passed since the Village 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 Village; and
  - The Village has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The Village 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 Village;
  - The Village 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 Village.

#### **4. How does the Village calculate FOIA processing fees?**

FOIA permits the Village 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 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 the Village.
- 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 Village.
- 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 you ask for the Village to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the Village's website if you ask for the Village to make copies.
- The cost to mail or send a public record to a requester.

#### **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 Village employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. 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.
- Overtime wages will not be included in labor costs unless agreed to by the requester; 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 unless the actual cost is lower (6 times the state minimum hourly wage currently)

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 Village. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the Village's usual FOIA requests, because of the nature of the request in the particular instance. The Village will specifically identify the nature of the unreasonably high costs in writing.

### **Copying and Duplication**

The Village 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 Village 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) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper.
- Copies for non-standard sized sheets will reflect the actual cost of reproduction.

### **Mailing Costs**

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

### **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 Village Council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

### **5. How do I qualify for an indigence discount on the fee?**

The Village 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 Village 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 sworn statement. For your convenience, the Village has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the Village FOIA Request Form, which is available on the Village's website: [www.leelanau.cc/suttonsbayvill.asp](http://www.leelanau.cc/suttonsbayvill.asp).

#### **6. May a nonprofit organization receive a discount on the fee?**

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is 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, 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 the state, if requested by the public body.

## **6. How may I challenge the denial of a public record or an excessive fee?**

### **Appeal of a Denial of a 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 Village Council by filing a written appeal of the denial with the office of the Village Clerk.

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. You may use the Village FOIA Appeal Form (To Appeal a Denial of Records), which is available on the Village’s website: [www.leelanau.cc/suttonsbayvill.asp](http://www.leelanau.cc/suttonsbayvill.asp)

The Village Council is not considered to have received a written appeal until the first regularly scheduled Village Council meeting following submission and receipt of the written appeal. Within 10 business days of receiving the appeal the Village Council 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 head of the Village will respond to the written appeal. The Village Council will not issue more than 1 notice of extension for a particular written appeal

Whether or not you submitted an appeal of a denial to the Village Council, you may file a civil action in Leelanau County Circuit Court within 180 days after the Village'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 Village 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 Excess FOIA Processing Fee**

If you believe that the fee charged by the Village to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the Village Council by filing a written appeal for a fee reduction to the office of the Village Clerk.

The appeal must specifically state the word “appeal” and identify how the required fee exceeds the amount permitted. You may use the Village FOIA Appeal Form (To Appeal an Excess Fee), which is available at the Village Hall and on the Village’s website: [www.leelanau.cc/suttonsbayvill.asp](http://www.leelanau.cc/suttonsbayvill.asp).

The Village Council is not considered to have received a written appeal until the first regularly scheduled Village Council meeting following submission of the written appeal. Within 10 business days after receiving the appeal, the Village Council 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 Village Council will respond to the written appeal.

Within 45 days after receiving notice of the Village Council’s determination of the processing fee appeal, you may commence a civil action in Leelanau 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 appropriate amount of reasonable attorneys’ fees, costs and disbursements. If the court determines that the

Village acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

Suttons Bay Village, Leelanau County  
321 St Joseph Street, P.O. Box 395  
Suttons Bay, MI 49682  
Phone: 231.271.3051

# FOIA Request for Public Records

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, *et seq.*

Request No.: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via: ☐ Email ☐ Fax ☐ Other Electronic Method

Date delivered to junk/spam folder: \_\_\_\_\_

Date discovered in junk/spam folder: \_\_\_\_\_

(Please Print or Type)

Name		Phone
Firm/Organization		Fax
Street		Email
City	State	Zip

**Request for:** ☐ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis

**Delivery Method:** ☐ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above  
☐ Deliver on digital media provided by the Village: \_\_\_\_\_

**Note:** The Village is not required to provide records in a digital format or on digital media if the Village does not already have the technological capability to do so.

**Describe the public record(s) as specifically as possible.** You may use this form or attach additional sheets:

[illegible]

### Consent to Non-Statutory Extension of Village's Response Time

I have requested a copy of records or a subscription to records or the opportunity to inspect records, pursuant to the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, *et seq.* I understand that the Village will respond to this request within five (5) business days after receiving it, and that response may include taking a 10-business day extension. However, I hereby agree and stipulate to extend the Village's response time for this request until: \_\_\_\_\_ (month, day, year).

Requestor's Signature

Date \_\_\_\_\_

(Complete both sides)



### Records Located on Website

If the Village directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Village must notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the Village must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the Village has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the Village must provide the public records in the specified format (if the Village has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

### Request for Copies/Duplication of Records on Village Website

I hereby stipulate that, even if some or all of the records are located on a Village website, I am requesting that the Village make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature

Date

### Overtime Labor Costs

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

### Consent to Overtime Labor Costs

I hereby agree and stipulate to the Village using overtime wages in calculating the following labor costs as itemized in the following categories:

1. ☐ Labor to copy/duplicate      2. ☐ Labor to locate      3a. ☐ Labor to redact      3b. ☐ Contract labor to redact  
6b. ☐ Labor to copy/duplicate records already on Village's website

Requestor's Signature

Date

### Request for Discount: Indigence

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
- (ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

Office Use: ☐ Affidavit Received    ☐ Eligible for Discount    ☐ Ineligible for Discount

I am submitting an affidavit as set forth above and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

### Request for Discount: Nonprofit Organization

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.
- (ii) 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.
- (iii) Is accompanied by documentation of its designation by the state, if requested by the Village.

Office Use: ☐ Documentation of State Designation Received    ☐ Eligible for Discount    ☐ Ineligible for Discount

I am a designated agent for the nonprofit organization making this FOIA request and that this request 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:

Date:

Requestor's Signature:

Suttons Bay Village, Leelanau County  
321 St Joseph Street, P.O. Box 395  
Suttons Bay, MI 49682  
Phone: 231.271.3051

**Notice to Extend Response Time for FOIA Request**  
**Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.**

**Request No.:** \_\_\_\_\_ **Date Received:** \_\_\_\_\_ **Check if received via:** ☐ Email ☐ Fax ☐ Other Electronic Method  
**Date of This Notice:** \_\_\_\_\_ **Date delivered to junk/spam folder:** \_\_\_\_\_  
(Please Print or Type) **Date discovered in junk/spam folder:** \_\_\_\_\_

Name	Phone	
Firm/Organization	Fax	
Street	Email	
City	State	Zip

**Request for:** ☐ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis  
**Delivery Method:** ☐ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above  
☐ Deliver on digital media provided by the Village: \_\_\_\_\_

**Record(s) You Requested:** (Listed here or see attached copy of original request) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We are extending the date to respond to your FOIA request for no more than 10 business days, until \_\_\_\_\_ (month, day, year)  
If you have any questions regarding this extension, contact \_\_\_\_\_ at \_\_\_\_\_  
\_\_\_\_\_

**Estimated Time Frame to Provide Records:** \_\_\_\_\_ (days or date)  
The time frame estimate is nonbinding upon the Village, but the Village is providing the estimate in good faith. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

**Reason for Extension:**

- ☐ 1. The Village needs to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to your request. Specifically, the Village must: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ 2. The Village needs to collect the requested public records from numerous field offices, facilities, or other establishments that are located apart from the Village office. Specifically, the Village must coordinate documents from the following locations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ 3. Other (describe): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature of FOIA Coordinator:**

**Date:**

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Suttons Bay Village, Leelanau County  
321 St Joseph Street, P.O. Box 395  
Suttons Bay, MI 49682  
Phone: 231.271.3051

## Notice of Denial of FOIA Request

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via: ☐ Email ☐ Fax ☐ Other Electronic Method  
Date of This Notice: \_\_\_\_\_ Date delivered to junk/spam folder: \_\_\_\_\_  
(Please Print or Type) Date discovered in junk/spam folder: \_\_\_\_\_  
Request for: ☐ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis

Name	Phone	
Firm/Organization	Fax	
Street	Email	
City	State	Zip

Delivery Method: ☐ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above  
☐ Deliver on digital media provided by the Village: \_\_\_\_\_

Record(s) You Requested: (Listed here or see attached copy of original request) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ All OR ☐ Part of your request for records has been denied. Please refer to this form for an explanation. If you have any questions regarding this denial, contact \_\_\_\_\_ at \_\_\_\_\_

### Reason for Denial:

☐ 1. **Exempt from Disclosure:** This item is exempt from disclosure under FOIA Section 13, Subsection \_\_\_\_\_ (insert number), because: \_\_\_\_\_  
\_\_\_\_\_

☐ 2. **Record Does Not Exist:** This item does not exist under the name provided in your request or by another name reasonably known to the Village. A certificate that the public record does not exist under the name given is attached. If you believe this record does exist, provide a description that will enable us to locate the record: \_\_\_\_\_  
\_\_\_\_\_

☐ 3. **Redaction:** A portion of the requested record had to be separated or deleted (redacted) as it is exempt under FOIA Section 13, Subsection \_\_\_\_\_ (insert number), because: \_\_\_\_\_  
\_\_\_\_\_

A brief description of the information that had to be separated or deleted: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the Village Council or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the Village has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (See back of this form for additional information on your rights.)

Signature of FOIA Coordinator: \_\_\_\_\_

Date: \_\_\_\_\_

FREEDOM OF INFORMATION ACT (EXCERPT)  
Act 442 of 1976

**15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A council or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that council or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, 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 under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, 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 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.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015

Suttons Bay Village, Leelanau County  
321 St Joseph Street, P.O. Box 395  
Suttons Bay, MI 49682  
Phone: 231.271.3051

**FOIA Appeal Form—To Appeal a Denial of Records**  
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

**Request No.:** \_\_\_\_\_ **Date Received:** \_\_\_\_\_ Check if received via: ☐ Email ☐ Fax ☐ Other Electronic Method

Name	Phone
Firm/Organization	Fax
Street	Email
City	State Zip

**Date of This Notice:** \_\_\_\_\_ **Date delivered to junk/spam folder:** \_\_\_\_\_

(Please Print or Type) **Date discovered in junk/spam folder:** \_\_\_\_\_

**Request for:** ☐ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis

**Delivery Method:** ☐ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above

☐ Deliver on digital media provided by the Village: \_\_\_\_\_

**Record(s) You Requested:** (Listed here or see attached copy of original request) \_\_\_\_\_

**Reason(s) for Appeal:**

The appeal must identify the reason(s) for the denial. You may use this form or attach additional sheets:

**Requestor's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Village Response:**

The Village will provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

**Village Extension:** We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until \_\_\_\_\_  
(month, day, year). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: \_\_\_\_\_

If you have any questions regarding this extension, contact: \_\_\_\_\_

**Village Determination:**

☐ Denial Reversed ☐ Denial Upheld ☐ Denial Reversed in Part and Upheld in Part

The following previously denied records will be released: \_\_\_\_\_

**Notice of Requestor's Right to Seek Judicial Review**

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240 to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the Village has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (See back of this form for additional information on your rights.)

**Signature of FOIA Coordinator:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**FREEDOM OF INFORMATION ACT (EXCERPT)**

**Act 442 of 1976**

**15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

- (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
- (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

- (a) Reverse the disclosure denial.
- (b) Issue a written notice to the requesting person upholding the disclosure denial.
- (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
- (d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A council or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that council or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body 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 under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, 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 under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, 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 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.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015.



Suttons Bay Village, Leelanau County  
321 St Joseph Street, P.O. Box 395  
Suttons Bay, MI 49682  
Phone: 231.271.3051

FOIA Appeal Form—To Appeal an Excess Fee  
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via: ☐ Email ☐ Fax ☐ Other Electronic Method  
Date of This Notice: \_\_\_\_\_ Date delivered to junk/spam folder: \_\_\_\_\_  
(Please Print or Type) Date discovered in junk/spam folder: \_\_\_\_\_

Name	Phone	
Firm/Organization	Fax	
Street	Email	
City	State	Zip

Request for: ☐ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis  
Delivery Method: ☐ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above  
☐ Deliver on digital media provided by the Village: \_\_\_\_\_

Record(s) You Requested: (Listed here or see attached copy of original request) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason(s) for Appeal:

The appeal must specifically identify how the required fee(s) exceed the amount permitted. You may use this form or attach additional sheets:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Requestor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Village Response:

The Village must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-day extension.

Village Extension: We are extending the date to respond to your FOIA fee appeal for no more than 10 business days, until \_\_\_\_\_  
(month, day, year). Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: \_\_\_\_\_

If you have any questions regarding this extension, contact: \_\_\_\_\_

Village Determination: ☐ Fee Waived ☐ Fee Reduced ☐ Fee Upheld

Written basis for Village determination: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10a of the Michigan Freedom of Information Act, MCL 15.240a, to appeal a FOIA fee that you believe exceeds the amount permitted under the Village's written Procedures and Guidelines to the Village Council or to commence an action in the circuit court for a fee reduction within 45 days after receiving the notice of the required fee or a determination of an appeal to the Village Council. If a civil action is commenced in court, the Village is not obligated to complete processing the request until the court resolves the fee dispute. If the court determines that the Village required a fee that exceeded the permitted amount, the court shall reduce the fee to a permissible amount.

Signature of FOIA Coordinator: \_\_\_\_\_

Date: \_\_\_\_\_



**FREEDOM OF INFORMATION ACT (EXCERPT)**  
**Act 442 of 1976**

**15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.**  
**Sec. 10a.**

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body 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 under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 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 that supports the remaining fee. The determination shall include a certification from the head of the public body 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.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A council or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that council or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section 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 under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body 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.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

**History:** Add. 2014, Act 563, Eff. July 1, 2015

## **VILLAGE OF SUTTONS BAY**

### **FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES**

#### **Preamble: Statement of Principles**

It is the policy of the Village of Suttons Bay that all persons, except those who are serving a sentence of imprisonment, 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 of Suttons Bay'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.

The Village of Suttons Bay will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Village of Suttons Bay's policy is to disclose public records consistent with and in compliance with State law.

#### **Section 1: General Policies**

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

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a Village 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 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. Neither the FOIA Coordinator nor other Village 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 Village on file for a period of at least one year.

## **Section 2: Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by Village of Suttons Bay must do so in writing. The 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.

Written requests for public records may be submitted in person or by mail to any Village office. Requests may also be submitted electronically by facsimile and e-mail. 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, electronically mailed or otherwise provided to him or her 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 may subscribe to future issues of public records that are created, issued or disseminated by the Village of Suttons Bay on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the Village's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to have a request processed. 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, within 5 business days of receipt of a FOIA request the Village will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day. The Village will respond to the 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 Village needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Village's website.

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 shall be provided to the requester with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Public Summary are maintained on the Village's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the Village, the cost of processing a FOIA request is expected to exceed \$50, or if the requester has not fully paid for a previously granted request, the Village will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requester 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 it will take the Village to provide the records to the requester. The best efforts 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, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

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 requester, or another name reasonably known by the Village; 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 Village Council or seek judicial review in the Leelanau 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 they 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 Section.

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.

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 by the Village, the requester 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 fully paid the Village 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 Village's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the Village to provide the records;
- 90 days have passed since the FOIA Coordinator 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 Village; and
- 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:

- the person making the request is able to show proof of prior payment in full to the Village;
- the Village is subsequently paid in full for the applicable prior written request; or
- 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 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.

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

- The particular request incurs costs greater than incurred from the typical or usual request received by the Village.

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

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.
- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

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.
- Labor costs will be charged at the hourly wage of the lowest-paid Village employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. 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.
- Overtime wages will not be included in labor costs until agreed to by the requester; overtime costs will not be used to calculate the fringe benefit cost.

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 Village has the technological capability necessary to provide the public record in the requested non-paper physical media format.

- In order to ensure the integrity and security of the Village's technological infrastructure, the Village will procure any requested non-paper media and will not accept non-paper media from the requester.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) 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 Village may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requester will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The Village will charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the Village does not respond to a written request in a timely manner, the following shall be required:

- 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:
  - The late response was willful and intentional.
  - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information
  - 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 e-mail, 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 such can be considered as primarily benefitting the general public.

The Village will waive 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 indigency.

An individual is not eligible to receive the waiver if:

- the requester has previously received discounted copies of public records from the Village twice during the calendar year; or
- the requester 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.

A nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with Mental Illness Act, 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, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

## **Section 7: Appeal of a Denial of a Public Record**

When a requester 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 file an appeal of the denial with the Village Clerk for submission to the Village Council at its next regularly scheduled meeting. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requester is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the Village Council 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.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Village Council may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

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



If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the Village arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the \$1,000.

### **Section 8: Appeal of an Excessive FOIA Processing Fee**

If a requester believes that the fee charged by the Village to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the office of the Village Clerk for submission to the Village Council at its next regularly scheduled meeting. 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 Village Council will respond in writing by:

- waive the fee;
- reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Village Council that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Village Council that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or
- issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Village Council will respond to the written appeal.

Within 45 days after receiving notice of the Village Council's determination of a fee appeal, a requester may commence a civil action in Leelanau County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the Village is not obligated to process the request for the public record until the court resolves the fee dispute.

If the court determines that the Village required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements.

If the court determines that the Village has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of \$500.

## **Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by Village Council or the Village 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 resolution is found to be in conflict with any previous policy promulgated by the Village Council or the Village 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 State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the Village Council or the Village 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 Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the Village Council of any change in these Policies and Guidelines.

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

## **Section 10: Appendix of Village of Suttons Bay FOIA Forms**

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form
- Appeal Form
- Certification Form