



YPSILANTI COMMUNITY UTILITIES AUTHORITY

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## **Freedom of Information Act Procedures and Guidelines**

### **1.0 Statement of Principles**

1.1 It is the policy of Ypsilanti Community Utilities Authority (YCUA), consistent with the Michigan Freedom of Information Act (FOIA), that the public is entitled to information regarding YCUA's operations, management and affairs.

1.2 YCUA recognizes and accepts its obligation to disclose nonexempt public records in response to a FOIA request and, when necessary, to invoke exemptions from disclosure in order to ensure the effective operation of the Authority and to protect the privacy of individuals.

1.3 It is YCUA's policy to respond to FOIA requests in compliance with State law and in a consistent and fair manner regardless of who submits a request.

### **2.0 General Policies**

2.1 The YCUA Board of Commissioners (YCUA Board or Board) designates YCUA's Executive Administrative Assistant to the Director of YCUA as the YCUA FOIA Coordinator. The FOIA Coordinator is authorized to designate other YCUA staff to act on the Coordinator's behalf to accept and process FOIA requests.

2.2 A request to inspect or obtain copies of public records from YCUA must be in writing and must describe the record in sufficient detail to enable YCUA to identify and find the record. (See Section 3.0)

2.3 If a request for a public record is received by email or other electronic transmission the day of receipt is the following business day.

2.4 If a request is sent by email and delivered to a YCUA spam or junk-mail folder, the day of receipt shall be one day after the FOIA Coordinator first becomes aware of the request.

2.5 YCUA may establish rules, consistent with State law and these Procedures and Guidelines, to administer the processing of FOIA requests.

2.6 YCUA will not create a new public record, or make a compilation or summary of information, which does not already exist and YCUA will not provide answers to questions contained in a FOIA request or regarding the content of records produced in response to an FOIA request.

2.7 The FOIA Coordinator shall keep a copy of all written requests for public records received by YCUA on file for a period of at least one year.

2.8 This Procedures and Guidelines document and a Written Public Summary is available to the public at no charge.

2.9 This Procedures and Guidelines document and a Written Public Summary will be maintained on YCUA's website at: [www.ycua.org](http://www.ycua.org). A link to those documents may be provided in lieu of providing paper copies of those documents. (See paragraph 4.4)

### **3.0 Requesting a Public Record**

3.1 A specific FOIA request form is not required. The FOIA Coordinator may make a YCUA FOIA Request Form available on YCUA's website.

3.2 A person may request that public records be provided on non-paper physical media, by electronic transmission or in digital form in lieu of paper copies. YCUA will comply with such a request if it possesses the technological capability to provide records in the requested non-paper physical media format.

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

3.4 If a verbal, non-written request for records is made and the record(s) are believed to be available on the YCUA website, where practicable and to the best ability of the employee receiving the request, the requester shall be informed of the YCUA website address.

3.5 A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record.

### **4.0 Processing a Request**

4.1 Unless otherwise agreed to in writing by the person making a FOIA request, YCUA will respond within 5 business days of receipt of a request. If a request is received by email or other electronic transmission, the day of receipt shall be the following business day. (See paragraph 2.2)

4.2 YCUA will respond to a request, in writing, in one of the following ways:

4.2.1 grant the request;

4.2.2 deny the request;

4.2.3 grant the request, in part, and deny the request, in part;

4.2.4 issue a notice that, due to the nature of the request, YCUA will have an additional 10 business days to respond, for a total of no more than 15 business days, with only one such extension permitted; or,

4.2.5 issue a written notice that the record requested is available, at no charge, on YCUA's website.

4.3 If the request is granted, or granted in part, the fees allowed and charged by YCUA shall be paid in full before the public record is produced. If YCUA charges a fee, the FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request.

4.4 A copy of these Procedures and Guidelines and a Written Public Summary will be provided free of charge with the response to a request for public records. If these Procedures and Guidelines and a Written Public Summary are maintained on YCUA's website, a website link to those documents may be provided in lieu of providing paper copies.

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

4.6 If, based on a good-faith calculation, 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, YCUA may require a deposit and shall include a detailed itemization of the allowable costs estimated to be incurred and an estimate of the time it will take YCUA to provide the records. This estimate shall be nonbinding on YCUA. (See paragraph 5.1)

4.7 If a request is denied or denied, in part, the FOIA Coordinator will issue a Notice of Denial, signed by the FOIA Coordinator, which shall provide:

4.7.1 an explanation why a requested public record is exempt from disclosure; or

4.7.2 a statement that the requested record does not exist under the name or description provided, or another name reasonably known to YCUA; or

4.7.3 a description of the information within a public record that is deleted from the public record; and

4.7.4 an explanation of the right to submit an appeal of the denial to the YCUA Director or seek judicial review in the Washtenaw County Circuit Court; and

4.7.5 an explanation of the right to be awarded attorneys' fees, costs, disbursements, actual or compensatory damages, and punitive damages of \$1,000, should the requester prevail in a civil action in Washtenaw County Circuit Court.

4.8 If a request does not sufficiently describe a public record, the FOIA Coordinator, in lieu of issuing a Notice of Denial, may seek clarification or amendment of the request. A clarification or amendment will be considered a new request.

4.9 YCUA will provide reasonable opportunities and facilities to examine and inspect public records during normal business hours. YCUA may establish rules regulating the manner in which records may be viewed in order to protect YCUA records and to prevent unreasonable interference with YCUA operations.

4.10 The FOIA Coordinator will, upon written request, furnish a “certified” copy of a public record at no additional cost.

## **5.0 Fee Deposits**

5.1 If the fee estimate is expected to exceed \$50, a FOIA requester may be asked to provide a deposit not exceeding one-half of the total estimated fee. (See paragraph 4.6)

5.2 If a request is from a requester who has not fully paid YCUA for copies of records produced in response to a previous request, the FOIA Coordinator may require a deposit of 100% of the estimate before beginning a search for the newly requested record(s), when all of the following conditions exist:

- 5.2.1 the final fee for the prior written request is not more than 105% of the estimated fee;
- 5.2.2 the public records made available contained the information sought in the prior written request and remain in YCUA's possession;
- 5.2.3 the public records were made available to the individual, subject to payment, within the time frame estimated by YCUA to provide the records;
- 5.2.4 ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- 5.2.5 the individual is unable to show proof of prior payment to YCUA; and
- 5.2.6 the FOIA Coordinator has prepared a detailed itemization that is the basis for the increased estimated fee deposit for the current FOIA request.

5.3 The FOIA Coordinator will not require a deposit of 100% of the estimate if any of the following apply:

- 5.3.1 the person making the request is able to show proof of prior payment in full;
- 5.3.2 YCUA is subsequently paid in full for the applicable prior written request; or
- 5.3.3 three hundred sixty five (365) days have passed since the requester made the request for which full payment was not remitted.

## **6.0 Calculation of Fees**

6.1 A fee will not be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would

result in unreasonably high costs to YCUA, because of the nature of the request, and YCUA specifically identifies the nature of the unreasonably high costs.

- 6.2 The following factors shall be used to determine an “unreasonably high cost” to YCUA:
  - 6.2.1 the request will result in costs greater than the costs incurred from the typical or usual request received by YCUA;
  - 6.2.2 the volume of the public records requested;
  - 6.2.3 the amount of time spent to search for, examine, review and separate exempt from non-exempt information;
  - 6.2.4 whether the public records are from more than one YCUA department or various YCUA offices must respond to the request;
  - 6.2.5 the available staffing to respond to the request; and,
  - 6.2.6 similar factors identified by the FOIA Coordinator in responding to the request.
- 6.3 YCUA may charge for the following costs associated with processing a FOIA request:
  - 6.3.5 labor costs associated with copying or duplication or publication, including making paper copies, making digital copies, or transferring digital records to non-paper physical media or through the Internet or other electronic means;
  - 6.3.1 labor costs associated with searching for, locating and examining a requested record;
  - 6.3.2 labor costs associated with a review of a record to separate and delete information exempt from disclosure;
  - 6.3.4 the cost of copying paper copies of records, as an item separate from the labor cost, (See 6.6.1);
  - 6.3.3 the cost of computer discs, computer tapes or other digital or similar media; and,
  - 6.3.6 the cost to mail or send a record.
- 6.4 Labor costs will be calculated based on the following requirements:
  - 6.4.1 labor costs, estimated and charged in 15-minute increments, with partial time increments rounded down;

- 6.4.2 labor costs charged at the hourly wage of the lowest-paid YCUA employee capable of doing the work, in the specific fee category, regardless of who actually does the work;
  - 6.4.3 labor costs, up to 50% of the applicable labor charge, to cover or partially cover the cost of fringe benefits, but not in excess of the actual cost of fringe benefits; and,
  - 6.4.5 overtime wages, included in labor costs, if agreed to by the requester, but overtime costs will not be used to calculate the fringe benefit cost.
- 6.5 The cost to provide non-paper physical media copies will be as follows:
- 6.5.1 actual cost of computer disks, computer tapes or other digital or similar media, using most reasonably economical cost for the media.
  - 6.5.2 this cost will only be assessed if YCUA has the technological capability to provide the record in the requested non-paper physical media format. (See 3.4)
  - 6.5.3 in order to ensure the integrity and security of YCUA's technological infrastructure, YCUA will procure non-paper media and will not accept media from a FOIA requester.
- 6.6 The cost to provide paper copies will be as follows:
- 6.6.1 paper copies on standard letter (8 ½ x 11) or legal (8 ½ x 14) size paper will not exceed \$.10 per page.
  - 6.6.2 copies for non-standard sized paper will reflect the actual cost of reproduction.
  - 6.6.3 YCUA will provide records using double-sided printing, if it saves costs and is available.
- 6.7 The cost to mail records will be as follows:
- 6.7.1 actual cost to mail the records using a reasonably economical and justified means;
  - 6.7.2 the cost of the least expensive form of postal delivery confirmation; and
  - 6.7.3 no charge for expedited shipping or insurance, unless specified by the requester.

6.8 If the FOIA Coordinator does not respond to a written request in a timely manner, the following rules apply:

6.8.1 the labor costs will be reduced by 5% for each day YCUA exceeds the time permitted under the FOIA, up to a 50% maximum reduction, if any of the following applies:

6.8.1.1 YCUA's late response was willful and intentional;

6.8.1.2 the written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment; or

6.8.1.3 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.

## **7.0 Waiver of Fees; Discounted Fees**

7.1 The cost of the search for and copying of a public record may be waived or reduced if, in YCUA's the judgment, a waiver or reduced fee is in the public interest.

7.2 The FOIA Coordinator will discount the first \$20 of a processing fee if the requester submits an affidavit stating that the requester is:

7.2.1 indigent and receiving specific public assistance; or

7.2.2 if not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

7.3 A FOIA requester is not eligible to receive a waiver if:

7.3.1 the requester has previously received discounted copies of public records from YCUA twice during the calendar year; or

7.3.2 the requester has requested records in connection with a third party or parties who are offering or providing payment for the records.

7.4 An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit form available on YCUA's website.

7.5 The FOIA Coordinator will discount the first \$20 of the processing fee for a request submitted by:

7.5.1 A nonprofit organization designated by the State to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for

Individuals With Mental Illness Act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

7.5.1.1 is made directly on behalf of the organization or its clients;

7.5.1.2 is made for a reason consistent with the mission and provisions of those federal laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and,

7.5.1.3 is accompanied by documentation of the State designation specified in 7.5.1, above, if requested by YCUA.

## **8.0 Appeal of a Denial of a Public Record**

8.1 When a requester believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, the requester may appeal to the YCUA Board by filing an appeal with the FOIA Coordinator.

8.2 The appeal must be in writing, must state the word "appeal," and identify the reason or reasons the requester is seeking a reversal of the denial.

8.3 Within 10 business days of receiving an appeal the YCUA Board will respond in writing by:

8.3.1 reversing the denial;

8.3.2 affirming the denial;

8.3.3 reversing the denial, in part, and affirming the denial, in part; or,

8.3.4 under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the YCUA Board shall respond to the written appeal, with one (1) such extension permitted.

8.4 The YCUA Board will be deemed to have received a written appeal on the date of the first regularly scheduled YCUA Board meeting following submission of the written appeal.

8.5 If the YCUA Board fails to respond to a written appeal, or affirms all or a portion of the denial that is the subject of the written appeal, the requester may seek judicial review of the nondisclosure in the Washtenaw County Circuit Court.

8.6 Whether or not a requester submitted an appeal of a denial to the YCUA Board, the requester may file a civil action in Washtenaw County Circuit Court within 180 days after YCUA's final determination to deny the request.

8.7 If a court determines a public record is not exempt from disclosure, it shall order YCUA to cease withholding or to produce all or a portion of a public record.

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

8.9 If the court determines that YCUA arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a public record, the court shall order YCUA to pay a civil fine of \$1,000, payable to 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, to the requester.

## **9.0 Appeal of an Excessive FOIA Processing Fee**

9.1 "Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

9.2 If a requester believes that the fee charged by YCUA exceeds the amount permitted by the FOIA or under this policy, the requester must first appeal to the YCUA Board by submitting a written appeal for a fee reduction to the office of the FOIA Coordinator.

9.3 The appeal must be in writing, must state the word "appeal," and identify how the required fee exceeds the amount permitted.

9.4 Within 10 business days after receiving the appeal, the YCUA Board will respond in writing by:

9.4.1 waiving the fee;

9.4.2 reducing the fee and issuing a written determination stating the basis that supports the remaining fee;

9.4.3 upholding the fee and issuing a written determination stating the basis that supports the required fee; or

9.4.4 issuing a notice stating the reason or reasons for extending for not more than 10 business days the period during which the Board will respond to the written appeal, with one (1) such extension permitted.

9.5 The YCUA Board will be deemed to have received a fee appeal on the date of the first regularly scheduled YCUA Board meeting following submission of the written appeal.

9.6 If the YCUA Board reduces or upholds the fee, the written determination must include a certification from the Board that the statements in the determination are accurate and that the reduced fee amount complies with YCUA's FOIA Procedures and Guidelines and Section 4 of the FOIA.

9.7 Within 45 days after receiving notice of the Board's determination of a fee appeal, the requester may commence a civil action in Washtenaw County Circuit Court for a fee reduction.

9.8 If a civil action is commenced against YCUA for an excess fee, YCUA is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

9.9 An action shall not be filed in Washtenaw County Circuit Court unless one of the following applies:

9.9.1 YCUA does not provide for appeals of fees;

9.9.2 the YCUA Board failed to respond to a written appeal as required; or,

9.9.3 the YCUA Board issued a determination to a written appeal.

9.10 If a court determines that YCUA required a fee that exceeds the amount permitted under its FOIA Procedures and Guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with such an order of the court may be punished as contempt of court.

9.11 If the requester prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against YCUA.

9.12 If the court determines that YCUA has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order YCUA to pay a civil fine of \$500, 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 to the requester. 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.

## **10.0 Conflict with Prior FOIA Policies and Procedures; Effective Date**

10.1 To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by YCUA these Procedures and Guidelines are controlling.

10.2 To the extent that any administrative rule promulgated by the FOIA Coordinator, subsequent to the adoption of these Procedures and Guidelines, is in conflict with any previous policy promulgated by YCUA, the administrative rule promulgated by the FOIA Coordinator is controlling.

10.3 To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator is found to be in conflict with any State statute, the applicable statute shall control.

10.4 The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by YCUA, and to adopt such administrative rules as the Coordinator determines to be necessary to facilitate the processing of FOIA requests, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the YCUA Board of any change to these Procedures and Guidelines.

10.5 These FOIA Procedures and Guidelines are effective July 1, 2015.