

VILLAGE OF PENTWATER
WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the Written Public Summary of the Village of Pentwater's FOIA Procedures and Guidelines relevant to the general public.

1. How do I submit a FOIA request to the Village of Pentwater?

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Village of Pentwater must be submitted in writing.

A request must clearly and sufficiently describe a public record so as to enable the Village of Pentwater to find it.

A FOIA Request form for your use and convenience is available on the Village of Pentwater's website at <https://www.pentwatervillage.org/>.

Written requests can be made in person or by delivery to the Village of Pentwater in person or by mail.

Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for a public record.

2. What kind of response can I expect to my request?

Within five business days of receipt of a FOIA request the Village of Pentwater will issue a response. If a request is received by facsimile or e-mail the request is deemed to have been received on the following business day. The Village of Pentwater 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 of Pentwater needs an additional 10 business days to respond.
- Issue a written notice indicating that the public record requested is available at no charge on the Village of Pentwater's website.

If the request is granted, or granted in part, the Village of Pentwater will ask that payment be made for the 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 \$50.00, or if you have not paid for a previously granted request, the Village of Pentwater will require a deposit before processing the request.

3. What are the Village of Pentwater's fee deposit requirements?

If the Village of Pentwater has made a good faith calculation that the total fee for processing the request exceeds \$50.00, the Village of Pentwater will require that you provide a deposit in the amount of 50% of the total estimated fee. When the Village of Pentwater requests the deposit, it will provide you a non-binding best effort estimate of how long it will take to process the request following receipt by the Village of Pentwater of your deposit.

If the Village of Pentwater receives a request from a person who has not paid the Village of Pentwater for copies of public records made in fulfillment of a previously granted written request, the Village of Pentwater 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 of Pentwater's possession;
- The public records were made available to the individual, subject to payment within the time frame estimated by the Village of Pentwater to provide the records;
- Ninety days have passed since the Village of Pentwater 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 of Pentwater;
- The Village of Pentwater has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

The Village of Pentwater 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 of Pentwater;
- The Village of Pentwater is subsequently paid in full for all applicable prior written requests; or
- A total of 365 days have passed since the person made the request for which full payment was not remitted to the Village of Pentwater.

4. How does the Village of Pentwater calculate FOIA processing 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 of Pentwater because of the nature of the request in the particular instance, and the Village of Pentwater specifically identifies the nature of the unreasonably high costs.

The Michigan FOIA statute permits the Village of Pentwater to assess and collect a fee for six designated processing components. The Village of Pentwater may charge for the following costs associated with processing a request:

- Labor costs 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 cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.

- The cost of duplication or publication, not including labor, of paper copies of public records.
- Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- The cost to mail or send a public record to a requestor.

Labor Costs

- 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 of Pentwater 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.

Non-paper 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 only be assessed if the Village of Pentwater 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.
- The Village of Pentwater may provide records using double-sided printing, if cost-saving and available.

Mailing Costs

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

5. How do I qualify for a reduction of the processing fees?

The Village of Pentwater may waive or reduce the fee associated with a request when Village of Pentwater determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.

The Village of Pentwater will waive the first \$20.00 of the processing fee 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 indigency.

You are not eligible to receive the \$20.00 waiver if you:

- Have previously received discounted copies of public records from the Village of Pentwater 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 of Pentwater has provided an Affidavit of Indigency form for the waiver of FOIA fees on its website.

- The Village of Pentwater will waive the fee for a nonprofit organization which meets all of the following conditions:
- The organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act;
- The request is made directly on behalf of the organization or its clients;
- The request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
- The request is accompanied by documentation of the organization's designation by the State.

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 file an appeal of the denial with the Office of the Village of Pentwater. 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.

Within 10 business days of receiving the appeal the Village of Pentwater 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.

Whether or not you submitted an appeal of a denial to the Village of Pentwater, you may file a civil action in Oceana County Circuit Court within 180 days after the Village of Pentwater's final determination to deny your request. Should you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the Township acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1000.00.

Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the Village of Pentwater to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal for a fee reduction to the Office of the Village of Pentwater. 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 of Pentwater 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 of Pentwater will respond to the written appeal.

Within 45 days after receiving notice of the Village of Pentwater's determination of the processing fee appeal, you may commence a civil action in Oceana 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 of Pentwater acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.00.

Need more details or information?

This is only a summary of the Village of Pentwater's FOIA Procedures and Guidelines. For more details and information, copies of the Village of Pentwater's FOIA Procedures and Guidelines are available at no charge at the Village of Pentwater office and on the Village of Pentwater's website, <https://www.pentwatervillage.org/>.

VILLAGE OF PENTWATER FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

Preamble: Statement of Principles

It is the policy of the Village of Pentwater 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 Pentwater's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Village of Pentwater acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Village of Pentwater acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

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

Section 1: General Policies

The Village of Pentwater acting pursuant to the authority at MCL 15.236 designates the Village of Pentwater Clerk as the FOIA Coordinator. He or she is authorized to designate other Village of Pentwater staff to act on his or her behalf to accept and process written requests for the Village of Pentwater'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 of Pentwater 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, or his/her designee, shall review the Village of Pentwater spam and junk mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with the Village of Pentwater Information Technology staff to develop administrative rules for handling spam and junk mail so as to protect the Village of Pentwater systems from computer attacks which may be imbedded in an electronic FOIA 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 of Pentwater 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 of Pentwater

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 of Pentwater 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 the Village of Pentwater must do so in writing. The request must sufficiently describe a public record so as to enable the Village of Pentwater 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 will make available a FOIA Request Form for use by the public.

Written requests for public records should be submitted in person or by mail to the Village of Pentwater's 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 other otherwise provided to him or her in lieu of paper copies.

The Village of Pentwater 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 Pentwater on a regular basis. A subscription is valid for up to six 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 of Pentwater'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 submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, within five business days of receipt of a FOIA request the Village of Pentwater 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 of Pentwater 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 of Pentwater 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 of Pentwater'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 requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the Village of Pentwater'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 requestor will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the Village of Pentwater, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, the Village of Pentwater 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 requestor with a detailed itemization of the allowable costs estimated to be incurred by the Village of Pentwater to process the request and also provide a best effort estimate of a time frame it will take the Village of Pentwater to provide the records to the requestor. The best-efforts estimate shall be nonbinding on the Village of Pentwater, 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 requestor, or another name reasonably known by the Township; 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 of Pentwater Office or seek judicial review in the Oceana County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well 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 of Pentwater 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 of Pentwater records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Village of Pentwater 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: Public Inspection of Records

Upon receiving a verbal request to inspect Village of Pentwater records, the Village of Pentwater Clerk shall furnish the requesting person with a reasonable opportunity and reasonable facilities for inspection and examination of its public records.

A person shall be allowed to inspect public records during usual business hours, not less than four hours per day. The public does not have unlimited access to Village of Pentwater offices or facilities, and a person may be required to inspect records at a specified counter or table, and in view of Village of Pentwater personnel.

Village of Pentwater officials, appointees, staff or consultants/contractors assisting with inspection of public records shall inform any person inspecting records that only pencils, and no pens or ink, may be used to take notes.

In coordination with the official responsible for the records, the Village of Pentwater Clerk shall determine on a case-by-case basis when the Village of Pentwater will provide copies of original records, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.

The Village of Pentwater Clerk is responsible for identifying if records or information requested by the public is stored in digital files or e-mail, even if the public does not specifically request a digital file or e-mail.

A person cannot remove books, records or files from the place the Village of Pentwater has provided for the inspection.

No documents shall be removed from the office of the custodian of those documents without permission of that custodian, except by court order, subpoena or for audit purposes. The official shall be given a receipt listing the records being removed. Documents may be removed from the office of the custodian of those documents with permission of that custodian to accommodate public inspection of those documents.

Copies May Be Required to Enable Public Inspection of Records

In coordination with the official responsible for the records, the Village of Pentwater Clerk will determine, on a case-by-case basis, when the Village of Pentwater will provide copies of original records, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection.

Optional: A fee will be charged for copies made to enable public inspection of records, according to the Village of Pentwater's FOIA policy.

Section 5: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the Village of Pentwater, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the Village of Pentwater 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 of Pentwater's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Village of Pentwater to provide the records;
- Ninety 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 of Pentwater; 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 of Pentwater;
- The Village of Pentwater is subsequently paid in full for the applicable prior written request; or
- A total of 365 days have passed since the person made the request for which full payment was not remitted to the Village of Pentwater.

Section 6: 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 of Pentwater because of the nature of the request in the particular instance, and the Village of Pentwater specifically identifies the nature of the unreasonably high costs.

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

- The particular request incurs costs greater than incurred from the typical or usual request received by the Village of Pentwater. *See Bloch v Davison Community Schools, 2011 Mich App Lexis 771, 2011 WL 1564645*
- 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 of Pentwater department or various Village of Pentwater 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 of Pentwater 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 of Pentwater 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 of Pentwater 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 requestor; 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 of Pentwater 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 of Pentwater's technological infrastructure, the Village of Pentwater will procure any requested non-paper media and will not accept non-paper media from the requestor.

† The cost of labor directly associated with duplication, publication or transferring records to non-paper physical media can be charged in time increments of the public body's choosing with all partial increments rounded down. ‡ If using contract or outside labor to separate and delete exempt material from non-exempt material, the public body must clearly note the name of person or firm who does the work and the total labor cost may not exceed an amount 6 times the state minimum hourly wage, which is currently \$8.15.

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 nonstandard sized sheets of paper will reflect the actual cost of reproduction.

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

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

If the FOIA Coordinator 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 of Pentwater 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 7: 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 FOIA Coordinator 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 requestor has previously received discounted copies of public records from the Village of Pentwater, twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

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 2000 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 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the Village of Pentwater's Clerk. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the Village of Pentwater Clerk 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 of Pentwater Clerk may issue not more than one notice of extension for not more than 10 business days to respond to the appeal.

Whether or not a requestor submitted an appeal of a denial to the Township Manager, he or she may file a civil action in Oceana County Circuit Court within 180 days after the Village of Pentwater'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 of Pentwater 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 amount of \$1,000.

Section 9: Appeal of an Excessive FOIA Processing Fee

If a requestor believes that the fee charged by the Village of Pentwater 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 Village of Pentwater Clerk. 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 of Pentwater Clerk will respond in writing by:

- Waiving 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 of Pentwater Clerk 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 of Pentwater Clerk 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 of Pentwater Clerk will respond to the written appeal.

Within 45 days after receiving notice of the Village of Pentwater Clerk's determination of a fee appeal, a requestor may commence a civil action in Oceana County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the Village of Pentwater 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 of Pentwater 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 Village of Pentwater has acted arbitrarily and capriciously by charging an excessive fee, the court may also award the appellant punitive damages in the amount of \$500.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the Village of Pentwater Council or the Village of Pentwater 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 of Pentwater Council or the Village of Pentwater 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 of Pentwater Council or the Village of Pentwater 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 of Pentwater Council of any changes these Policies and Guidelines.

Section 10.1: Penalty for Violation of the Act

If the court determines in either an appeal of a denial of a public record, or the appeal of an excessive fee, that the public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, then in addition to any another award or sanction, the court shall impose a civil fine of not less than \$2500 or more than \$7500 for each occurrence.

The court is required to consider the budget of the public body and whether the public body has been previously been assessed penalties for violations of the FOIA. The civil fine is to be deposited to the general fund of the State treasury.

Section 11: Appendix of Village of Pentwater FOIA Forms

- Request Form
- Notice to Extend Response Time
- Denial Form
- Detailed Itemization of Fees Form
- Appeal Forms