

MONTCALM CARE NETWORK 611 North State Street, Stanton, MI 48888	
SUBJECT: Freedom of Information Act (FOIA) Requests	Section: 4530A
Effective Date: 1/26/16	Revised Date: January 20, 2020
Version: 1	Status: Current

Montcalm Care Network (MCN) shall ensure uniformity of practice and procedures in releasing public records and charging of fees in responding to Freedom of Information Act (FOIA) requests in compliance with Michigan's Freedom of Information Act (FOIA), Public Act 442 of 1976.

DEFINITIONS:

A. *FOIA Coordinator:* The Executive Director (Director), or an individual designated by the Director to accept and process requests for public records.

B. *Person:* An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

C. *Public body:* A public body shall include MCN.

D. *Unusual circumstances:* Any one or a combination of the following, but only to the extent necessary for the proper processing of a request:

1. The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
2. The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

E. *Verbal Request:* A verbal request for information is for information that MCN believes is available on MCN's public website, the FOIA Coordinator shall, where practicable and to the best of the FOIA Coordinator's knowledge, inform the requestor about MCN's pertinent website address.

F. *Writing:* Handwriting, typewriting, printing, Photostatting, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

G. *Written request:* A writing that asks for information, and includes a written request transmitted by facsimile, electronic mail, or other electronic means.

PROCEDURE

A. Receipt of FOIA Request

1. A "FOIA Request" is a request for public records made in writing with enough specificity to enable the FOIA Coordinator to locate the records. It may or may not specifically state that such request is being made pursuant to FOIA. Requests shall not be accepted from individuals serving a sentence of imprisonment in a state, county, or federal correctional facility. In accordance with PA 523 of 2018:

- a) A request must include the requesting person's complete name, address, and contact information—valid phone number or email address. For corporations or similar entities, a personal agent's same contact information must be provided
2. The FOIA Coordinator is the designated recipient for all FOIA Requests. **Any employee, officer, or board member of MCN that receives a FOIA Request shall immediately forward such request to the FOIA Coordinator.** Persons questioning how FOIA Request may be initiated shall be directed to MCN's website [accessible by going to <http://www.montcalmcare.net> click on "About Us", click on Freedom of Information Act ("FOIA")], and further shall be further advised to submit such requests in writing to the attention of the FOIA Coordinator. Requests may be submitted by mail to:
Montcalm Care Network
Attn: FOIA Coordinator
611 N. State St.
Stanton, Michigan 48888

Via email at info@montcalmcare.net, or via facsimile at (989) 831-7578.
3. A FOIA Request received via electronic transmission is not considered to have been received until one (1) business day after the electronic transmission is made, or if the FOIA Request is sent by electronic mail and delivered to a spam or junk-mail folder, the request is not received until one (1) day after MCN first becomes aware of the written request.
4. Upon receipt of a FOIA Request, the FOIA Coordinator shall immediately stamp the FOIA Request with the date the request was received, review the request to determine if it complies with the statute, and begin to process the request.

B. Procedure for Response

1. The FOIA Coordinator or designee shall review the request and collaborate with other MCN departments, as necessary, to determine if there is a public record for the information requested in existence and available to MCN.
2. An initial response to the FOIA Request will be sent within (5) five business days of the date it was received by MCN (not the date upon which it was received by the FOIA Coordinator). A request received by electronic mail shall be considered to have been received on the next business day following its transmission, or as provided for in FOIA.
3. MCN's initial response may grant the FOA Request:
 - a. in full,
 - b. grant it in part and deny it in part,
 - c. deny the FOIA Request entirely (in compliance with FOIA requirements), or
 - d. seek a one-time extension of up to ten (10) business days to respond to the FOIA request. The response must at a minimum comply with the requirements in MCL 15.235. The follow-up response to a time-extension notification may grant the FOIA Request in full, grant it in part and deny it in part, deny the FOIA Request entirely (in compliance with FOIA requirements). No additional time extensions may be permitted.
4. If the requestor specifies in their request a preference to receive the response in electronic format (e.g., .pdf), and in the sole discretion of the FOIA Coordinator, it is determined that producing the response in the requested format is feasible, reasonable, and cost effective, the response may be provided to the requestor electronically.
5. Every response denying, in whole or in part, a FOIA Request shall include information regarding the requestor's rights to appeal MCN's decision. MCN's appeal process will comply with the requirements set forth in MCL 15.240.

6. MCN shall keep and maintain a time stamped copy of each FOIA Request, MCN's subsequent response(s), and any accompanying documents for a minimum of (1) one year from the date the FOIA Request was received and the response(s) issued.
7. Alternatively, at the discretion of the requestor, MCN shall make available an opportunity for the requestor to make an inspection and examination of the identified public records at MCN's offices, during regular business hours.
8. The Act does not require MCN to create a new public record and to the extent required by the Act for the furnishing of copies, or edited copies pursuant to section 14(1) of the FOIA, of an already existing public record.
9. If MCN does not have the document requested, MCN shall treat the response as a denial.

C. Denials and Appeals

1. Any denials of a FOIA Request shall be made in compliance with MCL 15.243. Each denial shall reference the reason for the denial and the applicable FOIA section, as well as any additional information which could clarify the reason for denial, to the extent that such clarifying information may be produced.
2. Information and records concerning treatment and services rendered to individuals in MCN's possession are not public records, and are specifically exempt from disclosure under the Health Insurance Portability and Accountability ACT (HIPAA), the Michigan Mental Health Code (MCL 330.1001 *et seq.*), the Michigan Public Health Code (MCL 333.1101 *et seq.*), the federal regulations covering the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Part 2), and other applicable laws concerning the confidentiality of an individual's health and personal information. Other records may be deemed exempt from disclosure under FOIA Act 442 of 1976, Sec. 15.243, such as those related to, but not all-inclusive of: records subject to other statutory privilege, records that may constitute individual invasion of privacy, records related to pending litigation, and/or records if released may interfere with law enforcement or other legal proceedings.
3. After receiving MCN's final response denying all or a portion of a FOIA Request, a requestor may, at his or her discretion:
 - a. Make a written appeal (containing the word "appeal") to MCN's Director, or
 - b. Commence a civil action in Montcalm County Circuit Court within one hundred eighty (180) days of the requestor's receipt of MCN's final determination.
4. In the event MCN's Director receives an appeal of a FOIA denial, he or she shall within ten (10) business days provide a written response to the requestor either:
 - a. reversing the disclosure denial,
 - b. upholding the disclosure denial,
 - c. reversing the denial in part and upholding it in part, or
 - d. issue a one-time notice extending the response period for up to ten (10) business days.
5. Requestors may also appeal the imposition of fee by MCN to the extent that such fee exceeds the amount permitted under this Procedure. Such appeal may be made to the Director, in the same manner as denial appeals described above, or may be made to the Montcalm County Circuit Court within forty-five (45) days of the receipt of the final determination (or Director's determination upon appeal).
6. Pursuant to an appeal of excessive fees, the Director shall within ten (10) business days provide a written response to the requestor either:
 - a. waiving the contested fee,
 - b. reducing the fee,
 - c. upholding the fee, or

- d. issuing a one-time notice extending the response period for up to ten (10) business days.

D. Reimbursement of Cost

1. MCN may charge the requestor fees as reimbursements for costs incurred pursuant to a granted (or partially granted) FOIA Request, in compliance with FOIA. MCN may recover costs only on the six (6) following categories of expenditures:
 - a. Labor associated with searching for, locating, and examining of public records.
 - b. Labor associated with necessary review and/or redaction of exempt information from public records to be produced.
 - c. Labor associated with the duplication or publication, including the making of paper copies, to be given to a requestor.
 - d. Non-paper physical media for electronic media storage.
 - e. Actual incremental costs of necessary duplication of paper records.
 - f. Actual costs of mailing, if any.
2. MCN fees for the above cost-reimbursed services shall be as indicated in the Procedure 4530B Fee Itemization Schedule Form. Any fee that is charged shall be in compliance with MCL 15.234.
3. Labor Cost-
 - a. Labor cost shall be calculated and charged in increments of 15 minutes or more, with partial time increments rounded down. Rates for labor costs shall be at the lowest-paid employee rate for a MCN employee capable of performing the applicable task.
 - b. Cost for labor associated with necessary review and/or redaction of exempt information, such costs shall not exceed an amount equal to six (6) times the state minimum hourly wage rate determined by the Workforce Opportunity Wage Act (MCL 408.411 et seq.). Refer to the Fee Itemization Schedule for current hourly or 15 minute increment of time rates.
 - c. The labor fee shall include 50% of the applicable labor charge amount, to cover or partially cover the cost of employee fringe benefits. In no event shall MCN charge more than the actual cost of fringe benefits.
 - d. Overtime wages shall not be included in the calculation of labor costs unless specifically agreed to by the requestor, in writing.
4. The fee for duplication of paper records shall not exceed \$0.10 per 8 ½ x 11sheet of paper. MCN shall utilize the most economical means available for making copies available.
5. In the event MCN determines through a good-faith estimate that the fees to process the FOIA Request will be more than \$50.00, the requestor may be required to pay a good faith deposit of up to one-half (1/2) of the anticipated costs before MCN begins processing the FOIA Request or provides the public records. MCN's request for deposit shall include a detailed itemization of costs (Form 4530B) and the date by which deposit must be received, which date is 48 days after the date the notice is sent.
 - a) If the deposit is not received by MCN within 45 days from requester's receipt of the deposit notice sent by MCN, and if requester has not filed an appeal of the deposit amount requested, the FOIA request shall be considered abandoned by the requesting person, and MCN is no longer required to fulfill the request.
6. MCN may, in its sole discretion, waive or reduce of the fee if MCN determines that searching and/or furnishing public record copies is in the public's interest.
7. Public records shall be furnished without charge for the first \$20.00 of the fee for each in the following situations:
 - a. An individual who submits an affidavit stating facts showing inability to pay the cost because of indigence and/or that the individual is receiving public assistance (Procedure 4530C, Affidavit of Indigence Form.) An individual may not invoke this discount if the individual has previously received discounted copies of public records from MCN twice during the preceding calendar year, or if the individual is

requesting the information in conjunction with outside parties who are providing payment to the individual to make the request. If a requestor is ineligible for the discount, MCN shall inform the requestor specifically of the reason for ineligibility. If the requestor is eligible, MCN shall fully not the discount on the detailed itemization.

- b. A non-profit organization formally designated by the state to advocate the rights of persons with developmental disabilities and/or mental illness, pursuant the Mental Health Code (MCL 330.1931).
8. No fees shall be charged for any information that is available to the public on MCN's website.
 9. In the event that MCN fails to respond to a FOIA Request within the statutorily allotted five (5) business days, MCN shall reduce its charges for labor in the amount of five percent (5%) per day of delayed response, up to a maximum of fifty percent (50%) reduction.

REFERENCES

- A. Michigan Freedom of Information Act, MCL 15.231, *et seq*, Act 442 of the Public Acts of 1976, as revised; Public Act 523 of 2018, as revised.
- B. Michigan Mental Health Code, (MCL 330, 1001 *et seq*, PA 258 of 1974), as revised
- C. Michigan Public Health Code (MCL 333.1101 *et seq*.)
- D. Health Insurance Portability and Accountability Act (HIPAA) of 1996
- E. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Part 2)