



## POLICY AND PROCEDURE MANUAL

SUBJECT Freedom of Information Act (FOIA) Requests	ACCOUNTABILITY NMRE staff, its Provider Network, and the public	Effective Date: March 8, 2022	Pages: 2
REQUIRED BY	BBA Section: PIHP Contract Section: Other:	Last Review Date: June 23, 2025	Past Review Date:
Policy: <input checked="" type="checkbox"/>  Procedure: <input type="checkbox"/>	Review Cycle: Annual  Author: Regional Compliance Officer	Responsible Department: Compliance	Reviewers: NMRE CEO

### Definitions

**Freedom of Information Act (FOIA):** A piece of legislation that grants public access to documents or other data in the possession of a government agency or public authority, unless the information falls into a category that is specifically excluded from the terms of the legislation.

**Personnel:** Anyone working for the Northern Michigan Regional Entity (NMRE) and whose salary is paid by the NMRE and members of the NMRE Board of Directors and NMRE Substance Use Disorder Oversight Policy Board.

**Public Record:** Any writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it is created. For purposes of FOIA, a public record does not include protected health information or peer review records used to support competency review and credentialing. A public body cannot be compelled to create a public record that does not already exist to meet a FOIA request.

### Purpose

It is NMRE policy that all persons, except those incarcerated in a state or local correctional facility, are entitled to full and complete information regarding affairs of government and official acts of those who represent them as public officials and public personnel, consistent with the Michigan Freedom of Information Act (FOIA).

### Policy

The NMRE will 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 the request.

The NMRE acknowledges its legal obligation to disclose all nonexempt public records within its possession pursuant to a FOIA request. It is NMRE policy to grant eligible persons access to public records, unless those records are exempt from disclosure by law. NMRE Personnel are bound by all applicable local, state, and federal laws, rules, regulations and policies.

The NMRE FOIA Policy and Procedure and FOIA Request form will be available to the public via the website [www.nmre.org](http://www.nmre.org). The NMRE has established a consistent manner to release public records and charge fees to process FOIA requests.

#### Other Related Policies

NMRE Record Retention Policy

Michigan Freedom of Information Act, PA 442 of 1976, as amended

Michigan Mental Health Code, PA 258 of 1974, as amended

Health Insurance Portability and Accountability Act of 1996

Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2

Workforce Opportunity Wage Act, 2014 PA 138

#### Approval Signature

  
\_\_\_\_\_  
NMRE Chief Executive Officer

3/7/2022  
\_\_\_\_\_  
Date

SUBJECT: NMRE Freedom of Information Act (FOIA) Requests	ACCOUNTABILITY	Effective Date: March 8, 2022	Pages: 3
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## Procedure

### **A. FOIA Coordinator**

The NMRE's Chief Executive Officer will name the staff person or persons to act as the FOIA Coordinator(s). The FOIA Coordinator is authorized to designate other NMRE personnel to act on his/her behalf to accept and process written requests for NMRE's public records and approve denials. In no event will the NMRE Chief Executive Officer act in the capacity of the FOIA Coordinator.

### **B. Receipt of FOIA Requests**

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.
2. The FOIA Coordinator is the designated recipient of all FOIA Requests. Any NMRE personnel that receives a FOIA Request shall immediately forward it to the FOIA Coordinator. Persons questioning how to make a FOIA Request shall be directed to the entity's website [www.nmre.org](http://www.nmre.org) "FOIA Request for Public Records" and further advised to submit such requests in writing to the attention of the FOIA Coordinator. Requests may be submitted by email to [foia@nmre.org](mailto:foia@nmre.org) or by US mail to:  
Northern Michigan Regional Entity (NMRE)  
Attn: FOIA Coordinator  
1999 Walden Drive  
Gaylord, MI 49735
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 the spam or junk-mail folder, the request is not received until one (1) day after the NMRE 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 that it complies with the statute, and begin to process the request.

### **C. Procedure for Response**

1. The FOIA Coordinator or designee shall review the request and collaborate with other departments as necessary to see whether there is a public record of the information requested in existence and available. If there is a public record, the FOIA Coordinator or designee shall determine whether the public record is exempt from disclosure.
2. If the FOIA Request would require the NMRE to create a new public record, the FOIA Coordinator shall determine, in consultation with NMRE personnel, on a case-by-case basis, whether the interests of the public and/or the NMRE are best served by the creation and production of such new record in compliance with the FOIA Request.
3. An initial response to the FOIA request will be made within five (5) business days of the date it was received by the NMRE (and not the date 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.
4. The NMRE's initial response may grant the FOIA Request in full, grant it in part and deny it in part, or deny the FOIA Request entirely (in compliance with FOIA requirements), or seek a one-time extension of up to ten (10) business days to respond to the FOIA Request. The response must, at 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, or deny the FOIA request entirely (in compliance with FOIA requirements). No additional time extensions may be permitted.
5. If the requestor specifies in his/her 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.
6. Every response denying, in whole or in part, a FOIA Request shall include information regarding the requestor's right to appeal the NMRE's decision. The NMRE's appeal process will comply with the requirements set forth in MCL 15.240.
7. The NMRE shall keep and maintain a date stamped copy of each FOIA Request, the NMRE's subsequent response(s), and any accompanying documents for a minimum of one (1) year from the date the FOIA Request was received and the response(s) issued.
8. Alternatively, at the discretion of the requestor, the NMRE shall make available an opportunity for the requestor to inspect and examine the identified public records and the NMRE offices during regular business hours.

### **D. Denials and Appeals**

1. Any denial 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 that 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 beneficiaries that are in the NMRE'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.

3. After receiving the NMRE's final response denying all or a portion of a FOIA Request, a requestor may, at his/her discretion, appeal in writing (containing the word "appeal") to the NMRE's Chief Executive Officer or commence a civil action in compliance with MCL 15.240.
  - a. In the event the NMRE's Chief Executive Officer receives an appeal of a FOIA denial, he/she shall, within ten (10) business days, provide a written response to the requestor either reversing the disclosure denial, upholding the disclosure denial, reversing the denial in part and upholding it in part, or issue a one-time notice extending the response period for up to ten (10) business days.

#### **E. Assessing and Collecting Fees**

1. The NMRE may charge a fee for the cost of the search, examination, review, copying, separation of exempt from nonexempt information, and mailing costs related to a FOIA Request. A fee can only be charged for the cost of search, examination, review, and the separation of exempt from nonexempt information if the failure to charge a fee for that request would result in unreasonably high costs to the NMRE. The NMRE shall estimate or charge fees, or demand a good-faith deposit, in accordance with MCL 15.234.
2. Requestors may appeal fees associated with processing FOIA requests to the NMRE Chief Executive Officer. Persons questioning how to appeal a FOIA fee shall be directed to the Entity's website [www.nmre.org](http://www.nmre.org) "FOIA Appeal Request Form".
  - a. Pursuant to an appeal of excessive fees, the NMRE Chief Executive Officer shall, within ten (10) business days, provide a written response to the requestor either waiving the contested fee, reducing the fee, upholding the fee, or issuing a one-time notice extending the response period for up to ten (10) business days.
3. Payment of fees charged in response to a FOIA Request must be paid by a check payable to "NMRE".

APPROVAL SIGNATURE

  
\_\_\_\_\_  
NMRE Chief Executive Officer

3/7/2022  
\_\_\_\_\_  
Date

**NMRE:** Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

**NMRE**  
1999 Walden Drive, Gaylord, MI, 49735  
Phone: 231.487.9144 Fax: 989.448.7078

**Request Form Note**  
Requestors are not required to use this form. NMRE may complete one for recordkeeping if not used.

## FOIA Request for Public Records

**Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.234, et seq.**

**Request No:** \_\_\_\_\_ **Date Received:** \_\_\_\_\_

Check if received via: ☐ Email ☐ Fax ☐ Mail  
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 Code:** \_\_\_\_\_

**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 digital media provided by NMRE: \_\_\_\_\_

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

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


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

I have requested a copy of 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 NMRE must respond to this request within five (5) business days after receiving it, and that response may include an extension of up to ten (10) business days. However, I hereby agree and stipulate to extend NMRE's response time for this request until: \_\_\_\_\_ (month/day/year)

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

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

### Records Located on Website

If NMRE 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, NMRE 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, NMRE 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 NMRE 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/her in a paper format or other form, including digital media, NMRE must provide the public records in the specified format (if NMRE has the technological capability) but may use a fringe benefit multiplier greater than 50%, not to exceed the actual costs of providing the information in the specified format.

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

I hereby stipulate that, even if some or all the records are located on the NMRE website, I request the NMRE make copies of those records on the website and deliver them to me in the format requested. 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 NMRE 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 NMRE'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 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.

1. The individual has previously received discounted copies of public records from the same public body twice during the same calendar year,
2. 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 and requesting that I receive the discount for indigence for this FOIA request:

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

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

### **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:

1. Is made directly on behalf of the organization or its clients.
2. 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.
3. Is accompanied by documentation of its designation by the state, if requested by NMRE.

**Office Use:**   ☐ Documentation of State designation received   ☐ Eligible for discount   ☐ Ineligible for discount

I stipulate that 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 of 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.

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

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



**NMRE:** Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

## NMRE

1999 Walden Drive, Gaylord, MI, 49735  
Phone: 231.674.5454 Fax: 231.487.9059

### FOIA Appeal Form – To Appeal an Excess Fee

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.234, et seq.

Request No: \_\_\_\_\_ Date Received: \_\_\_\_\_ Check if received via: ☐ Email ☐ Fax ☐ Mail  
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 Code: \_\_\_\_\_  
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 digital media provided by NMRE: \_\_\_\_\_

Records(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: \_\_\_\_\_

#### NMRE Response:

NMRE must provide a response within ten (10) business days after receiving this appeal, including a determination or taking one ten (10) day extension.

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

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

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

**NMRE Determination:** ☐ Fee waived ☐ Fee reduced ☐ Fee upheld

Written basis for NMRE determination: \_\_\_\_\_

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 NMREs written procedures and guidelines 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 NMRE. If a civil action is commenced in court, NMRE is not obligated to complete processing the request until the Court resolves the fee dispute. If the court determines that NMRE required a fee that exceeded the permitted amount, the Court shall reduce the fee to a permissible amount.

FOIA Coordinator's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

**15.240 a 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 board 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 board 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.

**Popular name:** Act 442

**Popular name:** FOIA