

NORTHCARE NETWORK

POLICY TITLE: Freedom of Information Act Procedure and Guidelines	CATEGORY: Governance	
EFFECTIVE DATE: 7/1/15	BOARD APPROVAL DATE: 8/12/15	
REVIEW DATE: 10/4/22	REVISION(S) TO POLICY STATEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OTHER REVISION(S): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
RESPONSIBLE PARTY: CEO and Executive Assistant to the CEO	CEO APPROVAL DATE: 10/4/22 Dr. Tim Kangas, CEO	

APPLIES TO

NorthCare Network Personnel
General Public

POLICY

It is the policy of NorthCare Network that all persons, except those incarcerated, 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 may fully participate in the democratic process. NorthCare Network'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.

PURPOSE

The purpose of this policy is to ensure compliance with Michigan's Freedom of Information, Act 442 of 1976, and as amended. It is the intent of NorthCare Network to perform public business in an open and public manner as required by Michigan's FOIA. This Policy describes the agency's procedures and guidelines for responding to FOIA requests.

DEFINITIONS

1. **Best Efforts Estimate:** a public body's non-binding estimate as to the time it will take to fulfill the request. The estimate will be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public record request.
2. **FOIA Coordinator:** shall be the individual responsible for processing all FOIA requests received by NorthCare Network and approving all denials under the FOIA in consultation with the CEO and the Agency's legal counsel.
3. **Public record:** a 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. Public record does not include computer software. This act separates public records into the following 2 classes:
 - a. Those that are exempt from disclosure under section 13 of the FOIA.
 - b. All public records that are not exempt from disclosure under section 13 of the FOIA and which are subject to disclosure under this act.

4. **Unusual circumstances:** any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:
 - a. 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.
 - b. 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.
5. **Writing:** handwriting, typewriting, printing, photostating, 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, hard drives, solid state storage components, or other means of recording or retaining meaningful content.
6. **Written request:** means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

REFERENCES

- Freedom of Information Act, PA 442 of 1976 and as amended
- NorthCare Network Governing Board FOIA Resolution
- NorthCare Network FOIA Forms:
 - Request for Public Records Form
 - Detailed Cost Itemization Form
 - Notice to Extend Response Time Form
 - Notice of Denial Form
 - Appeal of Denial of Records Form
 - Appeal of Excess Fee Form

HISTORY

NEW POLICY: 7/1/15

REVISION DATE: N/A, 4/24/17, 2/1/18, 12/19/18, 11/8/19, 1/20/21

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CEO APPROVAL DATE: 5/31/16, 5/2/17, 2/12/18, 1/7/19, 11/12/19, 10/6/20, 1/20/21, 12/6/21, 10/4/22

BOARD APPROVAL DATE: 8/12/15

PROCEDURES

A. Guidelines

NorthCare Network acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. NorthCare Network 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.

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

The NorthCare Network Governing Board appointed the Chief Executive Officer as the NorthCare Network FOIA Coordinator and authorized the CEO to appoint a FOIA Coordinator designee as needed.

NorthCare will make this policy, *FOIA Procedures and Guidelines*, and the NorthCare Written Public Summary publicly available without charge on the NorthCare Network's website at www.northcarenetwork.org. A link will be provided in lieu of providing paper copies of the documents. Upon request, paper copies will be provided.

B. FOIA Requests

1. FOIA request may be submitted in person or via mail, facsimile machine or electronic mail. Written requests may be submitted to NorthCare Network at the following address: FOIA Coordinator, NorthCare Network, 1230 Wilson Street, Marquette, MI 49855.
 - a. The FOIA request must include the requesting person's complete name, address, and valid telephone number or email, unless the individual qualifies as indigent per Michigan's Freedom of Information Act.
 - b. If the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent must be provided.
 - c. An address must be written in compliance with United States Postal Service addressing standards.
2. No specific form to submit a request for a public record is required. However, the Agency has approved and made available a FOIA Request Form for use by the public and is available on the NorthCare Network website www.northcarenetwork.org
3. The request must sufficiently describe a public record to enable NorthCare Network personnel to identify and find the requested public record. 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 provided under the FOIA.
4. Requests addressed to the Board or NorthCare Network that are received by NorthCare Network personnel shall be promptly forwarded to the FOIA Coordinator the same day it is received.
5. 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.
6. If a request is sent by e-mail and delivered to a spam or junk-mail folder, the request is not deemed received until 1 day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note 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.
7. A person who makes a verbal, non-written request for information believed to be available on NorthCare Network's webpage, where practicable and to the best ability

of the NorthCare Network representative receiving the request, shall be informed of the pertinent website address.

8. A person may request that public records be provided on non-paper physical media, electronically mailed, or otherwise provided to him or her in lieu of paper copies. NorthCare Network will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.
9. A person making a request may stipulate that NorthCare Network's response be electronically mailed, delivered by facsimile, or delivered by first-class mail. This does not apply if NorthCare Network lacks the technological capability to provide an electronically mailed response.
10. NorthCare is not obligated to create a new public record or make a compilation or summary of information which does not already exist.
11. The FOIA Coordinator shall keep a copy of all written requests for public records received by NorthCare Network on file for a period of at least 1 year.

C. Processing a FOIA Request

1. Responding to a FOIA Request
 - a. Within 5 business days of receipt of a FOIA request NorthCare Network will issue a response, unless otherwise agreed to in writing by the person making the request. NorthCare Network will respond to the request in one of the following ways:
 - i. Grant the request.
 - ii. Issue a written notice denying the request.
 - iii. Grant the request in part and issue a written notice denying in part the request.
 - iv. Issue a notice indicating that due to the nature of the request NorthCare Network needs an additional 10 business days to respond for a total of 15 business days. Only one such extension is permitted.
 - v. Issue a written notice indicating that the public record requested is available at no charge on NorthCare Network's website www.northcarenetwork.org
 - b. If the request is granted, or granted in part, a best efforts estimate will be provided as to how long it will take NorthCare Network to provide the records to the requestor. The best efforts estimate shall be nonbinding on NorthCare Network, but will be made in good faith and will strive to provide the requested records in a manner based on this state's public policy of FOIA.
 - c. 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. If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.
 - d. If the estimated cost of processing a FOIA request is expected to exceed \$50, or if the requester has not fully paid for a previously granted request,

NorthCare Network will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requester with a detailed itemization of the allowable costs estimated to be incurred by NorthCare Network to process the request.

- e. NorthCare Network 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 NorthCare Network records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal business operations of NorthCare Network.
- f. The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record to the person requesting the public record.
- g. A webpage link to a copy of this Policy and Procedures shall be provided to with the response to all written requests for public records.

2. Denial of a FOIA Request

- a. If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide, as applicable:
 - i. An explanation why a requested public record is exempt from disclosure; or
 - ii. A certificate that the requested record does not exist under the name or description provided by the requester, or another name reasonably known by NorthCare Network; or
 - iii. An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
 - iv. An explanation of the person's right to submit an appeal of the denial to either the Chief Executive Officer or seek judicial review in the Circuit Court; and
 - v. An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of up to \$1,000, should the requester prevail in Circuit Court.
 - vi. The Notice of Denial shall be signed by the FOIA Coordinator.

3. Fees

- a. Generally
 - i. 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 NorthCare Network because of the nature of the request in the particular instance, and NorthCare Network specifically identifies the nature of the unreasonably high costs.
- b. The following factors shall be used to determine an unreasonably high cost to NorthCare Network:
 - i. The particular request incurs costs greater than incurred from the typical or usual request received by NorthCare Network.
 - ii. Volume of the public record requested.
 - iii. Amount of time spent to search for, examine, review and separate exempt from nonexempt information in the record requested.
 - iv. The available staffing to respond to the request.

- v. Any other similar factors identified by the FOIA Coordinator in responding to the particular request.
- c. NorthCare Network may charge for the following costs associated with processing a FOIA request:
 - i. Labor costs directly associated with searching for, locating and examining a requested public record;
 - ii. Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed;
 - iii. The actual and most reasonably economical cost of non-paper physical media;
 - iv. The cost of duplication of publication, not including labor, of paper copies of public records;
 - v. 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; and
 - vi. The actual cost of mailing or sending a public record.

4. Calculation

- a. Labor costs will be calculated based on the following requirements:
 - i. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
 - ii. 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.
 - iii. Labor costs will be charged at the hourly wage of the lowest-paid NorthCare Network employee capable of doing the work in the specific fee category, regardless of who actually performs work.
 - iv. 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 labor cost may not exceed an amount 6 times the state minimum hourly wage.
 - v. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. NorthCare Network 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.
- b. The cost to provide records on non-paper physical media when so requested will be based on the following requirements:
 - i. The actual and most reasonably economical cost for the non-paper media.
 - ii. This cost will only be assessed if NorthCare Network has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- c. The cost to provide paper copies of records will be based on the following requirements:
 - i. Paper copies of public records made on standard letter (8 ½ x 11) or legal (8½ x 14) sized paper will not exceed \$.10 per sheet of paper.

- Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- ii. NorthCare Network may provide records using double-sided printing, if available.
- d. The cost to mail records to a requester will be based on the following requirements:
- i. The actual cost to mail public records using a reasonably economical and justified means.
 - ii. NorthCare Network shall charge for the least expensive form of postal delivery confirmation.
- e. If the FOIA Coordinator does not respond to a written request in a timely manner, the following fee reductions shall be applied:
- i. Reduce the labor costs by 5% for each day NorthCare Network 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.
 - ii. Fully note the charge reduction in the Detailed Itemization of Costs Form.

5. Fee Deposits

- a. If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by the FOIA Coordinator, the requester will be asked to provide a deposit not exceeding one-half of the total estimated fee.
- b. If a request for public records is from a person who has not fully paid NorthCare Network 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:
 - i. The final fee for the prior written request is not more than 105% of the estimated fee;
 - ii. The public records made available contained the information sought in the prior written request and remain in NorthCare Network's possession;
 - iii. The public records were made available to the individual, subject to payment, within the time frame estimated by NorthCare Network to provide the records;
 - iv. 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
 - v. The individual is unable to show proof of prior payment to NorthCare Network; and

- vi. The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.
- c. The FOIA Coordinator will not require an estimated 100% fee deposit if any of the following apply:
 - i. The person making the request is able to show proof of prior payment in full to NorthCare Network;
 - ii. NorthCare Network is subsequently paid in full for the applicable prior written request; or
 - iii. 365 days have passed since the person made the request for which full payment was not remitted to NorthCare Network.

6. Waiver of Fees

- a. 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:
 - i. Indigent and receiving specific public assistance; or
 - ii. If not receiving public assistance stating facts demonstrating an inability to pay because of indigence.
- b. An individual is not eligible to receive the waiver if:
 - i. The requester has previously received discounted copies of public records from NorthCare Network twice during the calendar year; or
 - ii. The requester requests information in connection with other persons who are offering or providing payment to make the request.
- c. A nonprofit organization designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, or their successors; if the request meets all of the following requirements:
 - i. Is made directly on behalf of the organization or its clients;
 - ii. Is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code, 1974 PA 258 [MCL 330.1931]; and
 - iii. Is accompanied by documentation of its designation by the State.

D. Appeals

1. Appeal of a Denial of a Public Record

- a. When a requester believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial to the Chief Executive Officer of NorthCare Network. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requester is seeking a reversal of the denial. The NorthCare Network FOIA Appeal of Denial of Records Form may be used and is available on the website www.northcarenetwork.org
- b. Within 10 business days of receiving the appeal the Chief Executive Officer will respond in writing in one of the following ways:
 - i. Reverse the disclosure denial;
 - ii. Uphold the disclosure denial;
 - iii. Reverse the disclosure denial in part and uphold the disclosure denial in part; or

- iv. Under unusual circumstances, issue a notice of extension for not more than 10 business days to respond to the appeal.
 - c. Regardless of whether a requestor submitted an appeal of a denial to Chief Executive Officer, he or she may file a civil action in Circuit Court within 180 days after NorthCare Network's final determination to deny the request.
- 2. Appeal of an Excessive FOIA Processing Fee
 - a. If a requester believes that the fee charged by NorthCare Network 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 Chief Executive Officer. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The NorthCare Network FOIA Appeal of Excess Fee Form may be used and is available on the website www.northcarenetwork.org
 - b. Within 10 business days after receiving the appeal, the Chief Executive Officer will respond in writing by:
 - i. Waiving the fee;
 - ii. Reducing the fee with a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the Chief Executive Officer that the statements in the determination are accurate and the reduced fee amount complies with this Policy and Procedures and Section 4 of the FOIA;
 - iii. Upholding the fee with a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the Chief Executive Officer that the statements in the determination are accurate and the fee amount complies with this Policy and Procedures and Section 4 of the FOIA; or
 - iv. Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Chief Executive Officer will respond to the written appeal.
 - c. Within 45 days after receiving notice of the Chief Executive Officer's determination of a fee appeal, a requestor may commence a civil action in Circuit Court for a fee reduction. If a civil action is filed appealing the fee, NorthCare is not obligated to process the request for the public record until the Court resolves the fee dispute.

E. Miscellaneous

1. Conflicts

- a. To the extent that this Policy and Procedures conflict with previous FOIA policies promulgated by NorthCare Network, this Policy and Procedures shall supersede all prior policies and shall control.
- b. To the extent that any provision of this Policy and Procedures 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.