

## ADM 47 Freedom of Information Act Requests

### I. PURPOSE

West Shore Community College ("WSCC") is committed to performing its obligations to provide information to the public as required by the Michigan Freedom of Information Act ("FOIA"), MCL 15.231, *et seq.* WSCC provides these guidelines to assist the public in determining how WSCC will implement its obligations under FOIA. While WSCC may invoke certain exemptions in response to FOIA requests, as permitted by law, it will implement both the production and the exercise of its right to invoke exemptions in a manner that is fair, consistent, and unbiased.

### II. AUTHORITY

MCL, §15.231, *et seq.*

### III. PROCEDURE

#### A. Process for Submitting a Request

The chief administrative officer is designated as the FOIA coordinator. The chief administrative officer may authorize other personnel to act on his or her behalf. All FOIA requests should be addressed and sent to:

FOIA Coordinator  
WSCC  
P.O. Box 277  
Scottville, MI 49454

OR

email [foiarequests@westshore.edu](mailto:foiarequests@westshore.edu)

FOIA requests must be submitted in writing. The requests may be submitted in person, by mail, or by e-mail. If the request is received by e-mail, it will be considered received on the following business day after transmission. If it is sent by mail, it will be considered received on the date that it is delivered by the U.S. Postal Service to WSCC. In the event that an e-mail request goes into WSCC's

spam or junk mail folder, it will be considered received on the day after WSCC first becomes aware of the request.

WSCC's FOIA Coordinator will review its spam and junk mail folders on a regular basis, no less than once a month, in an effort to determine whether any FOIA requests have been delivered into the spam or junk mailboxes. WSCC does not require that a person making a FOIA request use a specific form. However, the written request must sufficiently describe the record(s) that the person is seeking so that WSCC is able to identify and locate the requested public record(s).

There is one exception to the requirement that a request be in writing. If a person makes a verbal request for information that the WSCC employee receiving the request believes is available on WSCC's website, the employee shall inform the requester of the fact that it is available on the website and, if practicable, provide the requester with the specific link.

If a written request seeks disclosure of records that are available on WSCC's website, WSCC will inform the requester of this fact and provide him or her with the link to the appropriate web page in lieu of producing paper copies. However, paper copies will be provided, upon request, and subject to the fees discussed below.

WSCC is not obligated to create documents or to compile or summarize information in order to comply with its obligations under FOIA. Additionally, neither the FOIA Coordinator nor other WSCC employees are required to provide answers to questions that may be contained in a FOIA request, including questions regarding the content of the requested records.

## **B. Processing a Request**

WSCC will respond in writing to a FOIA request within five (5) business days of receipt, as defined above unless otherwise agreed to in writing by the person making the request. WSCC's response will be one or more of the following:

- Notification that the request is granted;
- Notification denying the request;
- Notification that the request is granted in part and denied in part;
- Notification that WSCC needs an additional ten (10) business days to respond to the request (WSCC may only request one such extension);

- Notification that the public record(s) requested is/are available at no charge on WSCC's website.

The response will also include a copy of these procedures and guidelines or, if applicable, a link to this document on WSCC's website.

If the request is granted in whole or in part, the FOIA Coordinator will provide a detailed itemization of allowable costs on WSCC's standardized Itemization of Allowable FOIA Charges form ("Form"). A deposit may be required, as explained on the Form, however, in all circumstances, payment is required before the documents requested will be provided to the requesting party.

If the request is denied in whole or in part, the FOIA coordinator will issue a notice of denial which may include the following information, as applicable:

- An explanation as to why the requested record is exempt from disclosure;
- Certification that the requested record does not exist as described by the requestor or that WSCC is not reasonably able to identify the document;
- Whether another public record or information within the requested public record has been separated from or deleted from the documents being produced.

Additionally, the FOIA coordinator, in circumstances involving a denial will provide:

- An explanation of the requester's right to submit an appeal to the West Shore Community College Board of Trustees (the Board) or to seek judicial review of the denial in the Mason County Circuit Court; and
- An explanation of the requester's right to receive attorneys' fees, costs, and disbursements, in addition to actual or compensatory damages and punitive damages if he/she prevails in Circuit Court.

If the FOIA coordinator in his/her discretion seeks clarification or amendment of a request that is deemed deficient, the requesting party's submission of clarification or amendment will be considered a new request retriggering the timelines described above.

The requested records, to the extent the request is granted, may be reviewed during normal business hours. The FOIA coordinator is charged with developing

the process by which this viewing will occur. Certified copies of a public record will be provided, upon request, at no additional cost to the person requesting the public record.

If a person makes a FOIA request and asks for the records to be produced by non-paper physical media, WSCC will comply with this request if it is technologically capable of doing so.

### **C. Allowable Fees**

WSCC may charge fees, as allowed by statute, relating to the cost of search, examination, review, and redaction or separation of exempt from non-exempt information. WSCC may only charge a fee if the failure to charge a fee would result in unreasonably high cost to WSCC because of the nature of the request. If a fee is charged, WSCC must specifically identify the nature of the unreasonably high costs.

In all situations where a fee will be charged by WSCC for responding to the FOIA request, the FOIA Coordinator will provide the requesting party with a detailed itemization of the allowable costs estimated to be or actually incurred to process the request as well as a best effort estimate of the time frame it will take WSCC to provide the records on the above referenced Form. This estimate is not binding on WSCC, but WSCC will attempt to comply with the estimate.

WSCC may charge only for specified costs. The following costs may be charged, as appropriate, for processing a FOIA request:

- Labor costs directly associated with searching for, locating, and examining a public record;
- Labor costs associated with the review of the public record to separate and redact information that is exempt from disclosure from information that will be disclosed;
- The actual costs of computer discs or other digital or similar media used to produce the requested information;
- The cost of copying records, not including the labor costs, when paper copies are requested or appropriate;
- The costs of the labor associated with copying records or other publication of the records, including digital copies, or transferring of digital records to non-paper physical media;

- The actual costs of mailing or sending a public record to the requester.

The following requirements apply to all labor costs associated with processing a FOIA request:

- All labor costs, except those associated with copying or otherwise transferring non-paper records to non-paper physical media, will be estimated, and charged in 15-minute increments with all partial time increments rounded down;
- The costs of labor associated with duplication or transferring records to non-paper physical media will be charged in time increments of WSCC's choosing with all partial increments rounded down;
- Labor costs will be charged at the hourly rate of the lowest paid WSCC employee capable of doing the work in the specific area, regardless of whether that person actually performs the work;
- In the event that WSCC uses a contractor or outside labor to separate and redact exempt material from non-exempt material, it will identify the name of the person or firm who does this work. In such circumstances, the total labor cost charged will not exceed an amount six (6) times the minimum hourly wage in the State of Michigan;
- Labor costs also include a charge to cover or partially cover the cost of fringe benefits. To cover this cost, WSCC may add up to 50 percent of the applicable labor charge amount to cover or partially cover the cost of fringe benefits, however, this amount shall not exceed the actual cost of fringe benefits;
- Overtime wages will not be included in labor costs unless agreed to by the requesting party. Overtime costs will not be used to calculate fringe benefit costs in any circumstances.

If it is requested to do so and is technologically capable of doing so, WSCC will provide records on non-paper physical media. If this occurs, the following terms apply: computer disks, tapes, or other digital or similar media will be charged at the actual and most reasonably economical cost. Requests to produce documents on non-paper media will be filled using WSCC's technological infrastructure.

WSCC will charge fees, as appropriate, if it provides paper copies of records. The fees will be assessed as follows:

- Copies of public records on standard letter (8 1/2 x 11) or legal (8 1/2 x 14) sized paper will not exceed 10 cents per sheet of paper;
- Copies for non-standard-sized sheets of paper will be charged at the actual costs of reproduction;
- If available and would result in cost savings, WSCC may provide records using double-sided printing.

If the records are to be provided to the requester by mail, WSCC will charge the following:

- The actual cost to mail public records using a reasonably economical and justified means;
- The least expensive form of postal delivery confirmation;
- If WSCC elects to send the materials by expedited shipping or to insure the shipment, the requester will not be charged for this unless this is done at the requester's request.

All of the above costs must be reduced if WSCC does not respond to a written request in a timely manner. In the event that this occurs, the costs will be reduced as follows:

- The labor costs will be reduced by five (5) percent for each day by which WSCC exceeds the time permitted under FOIA to respond. The maximum reduction required shall be 50 percent;
- The reduction described in the preceding bullet point will only be given, however, if the late response is willful and intentional, or the written request includes a request for information with the first 250 words of the body of any written request, including an e-mail attachment, or the written request includes "Freedom of Information," "FOIA," "copy" or any recognizable variation of the preceding or a 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;
- Any charge reductions will be fully noted in the detailed itemization of costs form.

#### **D. Fee Waiver**

WSCC has the option to waive or reduce a fee in its sole discretion if it determines that waiving or reducing a fee is in the public interest.

Additionally, WSCC will waive the first \$20 of the processing fee if the person requesting a public record is indigent. To prove that the requester is indigent, he/she must present an affidavit stating that he/she is indigent and receiving specific public assistance, or, if he/she is not receiving public assistance, setting forth the facts demonstrating an inability to pay because of indigency. However, a requester is not entitled to receive this waiver if the requester has previously received discounted copies of public records two or more times during the calendar year or makes the request on behalf of other persons who are offering to or providing payment to the person for making the request.

Additionally, WSCC will waive the first \$20 of the processing fee for a non-profit organization designated by the state as carrying out activities under Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act 200 and the Protection and Advocacy for Individuals With Mental Illness Act. The fee waiver will only be implemented, however, if the request is made directly on behalf of such an organization or clients, is made solely for a reason consistent with the mission and provisions of Section 931 of the Mental Health Code, and the request is accompanied by documentation that the requesting organization is so designated by the State of Michigan.

#### **E. Deposit**

WSCC is entitled to request a deposit in certain circumstances.

If, based on a good faith calculation of the estimated fees, WSCC determines that the fee estimate is expected to exceed Fifty Dollars (\$50.00), it will ask the requester to provide a deposit of not more than one-half (1/2) of the total estimated fee.

If the requester has requested documents under FOIA from WSCC in the past and has not fully paid the fee associated with such request or requests, WSCC will require a deposit of 100 percent of the estimated processing fee before it begins to search for the public record(s) in any subsequent request. This will only apply, however, if:

- The final fee for the prior written request was not more than 105 percent of the estimated fee;

- The public records made available in the prior written request contained the information sought in the request and remain in WSCC's possession;
- The records requested were made available to the individual, subject to payment, within the time frame that WSCC estimated necessary to provide the records;
- At least 90 days have passed since the FOIA Coordinator notified the individual that the previously requested records were available for pick-up or mailing;
- The requesting individual is unable to provide proof of payment;
- The FOIA Coordinator has calculated the detailed itemization of the current written request fee estimate to determine the amount of the deposit.

However, WSCC will not require the increased estimated fee deposit in situations where:

- The person making the request shows proof of payment of the prior fee;
- The person pays WSCC in full for the prior written request; or
- 365 days have passed since the person made the request for which payment was not fully made.

#### **F. Appeal Rights Relating to Denial of a Request**

If all or a portion of a FOIA request has been denied by WSCC, the requester may, if he or she believes the request has been improperly denied or exempted from disclosure, file an appeal of the denial with the Board. The appeal must be in writing, must expressly include the word "appeal" in the written document, and must identify, with specificity, the reason, or reasons that the requester believes the decision should be reversed.

After receipt of a compliant appeal, the Board will review the appeal and, within ten (10) business days of receipt of the appeal, respond. The response may be a reversal of the denial, an affirmation or upholding of the denial, or a partial reversal of the denial. In the event that the Board needs to review a voluminous amount of materials or needs to collect records from multiple locations, the Board may notify the requester that he/she is extending the period of time due for his/her response for not more than an additional ten (10) business days.



A requester may also file a civil action in the Mason County Circuit Court within 180 days after WSCC issues its final determination denying, in whole or in part, the request for public records. The requester may file such an action regardless of whether he/she seeks an appeal from the Board as described above.

If the Mason County Circuit Court determines that the public record withheld or redacted by WSCC is not exempt from disclosure, it will award the requester his/her reasonable attorney's fees, costs, and disbursements. This award may be limited to only a partial amount if the court determines that the requester prevails on only part of his/her appeal.

If the court finds that WSCC arbitrarily and capriciously violated FOIA by refusing or delaying the disclosure of the requested records, it shall award punitive damages against WSCC and in favor of the requester in the amount of \$1,000. WSCC shall also be ordered in that circumstance to pay a civil fine of \$1,000 to the general fund of the State of Michigan treasury.

#### **G. Appeal Rights Relating to a Processing Fee**

A requester may appeal the amount of the fee charged by WSCC to process his/her FOIA request. To do so, he/she must submit a written appeal for a fee reduction to the Board. The appeal must specifically state the word "appeal" in the document and specify how the requester believes the charge exceeds the amount permitted by law.

Within ten (10) business days after receiving a fee appeal, the Board will respond in writing. The response will be either a waiver of the fee, a reduction of the fee, or an affirmation of the fee. In the event the fee is reduced or is affirmed, the Board shall also certify that the statements in his/her determination are accurate and that the fee amount complies with the procedures and guidelines of WSCC and Section 4 of FOIA. In the event the Board needs more than ten (10) business days to respond to a fee appeal, he/she shall issue a notice providing the reasons for the extension and the length of the extension, which shall not exceed more than ten (10) additional business days.

A requester may appeal the Board's determination of a fee appeal within 45 days after receiving notice of a determination. The requester may do so by filing a civil action in the Mason County Circuit Court. If a civil action is filed, WSCC may

withhold processing and/or producing the request until the court resolves the dispute.

The court may reduce the fee charged by WSCC if it determines that the fee exceeds the amount permitted by law. If the reduction is 50 percent or more of the total fee, the court may also award an appropriate amount of reasonable attorney's fees, costs, and disbursements to the requester. If the court determines that WSCC acted arbitrarily and capriciously by charging an excessive fee, the court will also award punitive damages in favor of the requester in the amount of \$500. Additional penalties may be imposed by a court in the situation where it determines WSCC inappropriately denied a public record or charged an excessive fee as allowed by statute. Any such fines will be deposited into the general fund of the State of Michigan treasury.

WSCC reserves the right to revise its procedures and guidelines to allow more efficient and effective administration of its obligations under FOIA and/or to comply with applicable law.

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