

# SHIAWASSEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

## Procedure

**TITLE:** 11a. Freedom of Information Act (FOIA) Requests

**NAME OF RELATED POLICY:** 11. Freedom of Information Act

### DEFINITIONS

**FOIA Coordinator:** An individual who is a public body or an individual designated by a public body in accordance with section 6 of the Freedom of Information Act to accept and process requests for public records. The chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

**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.

**Public Body:** An agency, board, commission, or council in the legislative branch of the state government, this includes SCCMHA.

**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. The Freedom of Information Act separates public records into two classes as follows:

1. Those that are exempt from disclosure under section 13 of the FOIA
2. All public records that are not exempt from disclosure under section 13 of the Freedom of Information Act and which are subject to disclosure under the act.

**Software:** A set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a filed name if disclosure of that filed name does not violate a software license.

**Unusual Circumstance:** Any one or a combination of the following, but only to the extent necessary:

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.

**Writing:** Handwriting, typewriting, printing, photostating, photographing, 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.

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

## PROCEDURE

### A. Receipt of a 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.
2. The FOIA Coordinator is the designated recipient for all FOIA Requests. Shiawassee County Community Mental Health Board of Directors, acting pursuant to the authority at MCL 15.236, designates the Executive Assistant as the FOIA Coordinator. **Any employee, officer, or board member of SCCMHA that receives a FOIA Request shall immediately forward such request to the FOIA Coordinator.** Persons questioning how a FOIA Request may be initiated shall be advised to submit such requests in writing to the attention of the FOIA Coordinator.

Requests may be submitted by mail to:

Shiawassee County Community Mental Health Authority

Attention: FOIA Coordinator

PO Box 428

Owosso, MI 48867

By email: [FOIA@shiacmh.org](mailto:FOIA@shiacmh.org)

By fax: (989) 723-0761

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 SCCMHA spam or junk mail folder, the request is not received until one (1) day after the FOIA Coordinator first becomes aware of the written request.
4. If a person makes a verbal, non-written request for information believed to be available on SCCMHA's website, where practicable and to the best ability of the

employee receiving the request, shall be informed of the pertinent website address.

5. The FOIA Coordinator or designee shall review SCCMHA spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with SCCMHA Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect SCCMHA systems from computer attacks which may be imbedded in an electronic FOIA 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.
6. Upon receipt of a FOIA Request, the FOIA Coordinator shall immediately stamp the FOIA Request with the date the request was received, record the request on the FOIA Log, review the request to determine if it complies with the statute, and begin to process the request.
7. The requestor can also subscribe to future issuances of public records that are created, issued or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and shall be renewable.

**B. Procedures for Response**

1. The FOIA Coordinator or designee shall review the request and collaborate with other SCCMHA departments, as necessary, to determine if there is a public record for the information requested in existence and available to SCCMHA.
2. An initial response to the FOIA Request will be sent within (5) five business days of the date it was received by SCCMHA (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. SCCMHA's initial response may grant the FOIA 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)
  - d. Seek a one-time extension of up to (10) ten 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.

- e. Issue a written notice indicating that the public record requested is available at no charge on the SCCMHA website.
4. If the requestor specifies in their request a preference to receive the response in electronic format, 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. The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record.
6. Every response denying, in whole or in part, a FOIA Request shall include information regarding the requestor's rights to appeal SCCMHA's decision. SCCMHA's appeal process will comply with the requirements set forth in MCL 15.240.
7. SCCMHA shall keep and maintain a time stamped copy of each FOIA Request, SCCMHA'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.
8. Alternatively, at the discretion of the requestor, SCCMHA shall make available an opportunity for the requestor to make an inspection and examination of the identified public records at SCCMHA offices, during regular business hours. The FOIA Coordinator or designee will sit with any person inspecting the public record and shall protect the public records from loss, unauthorized alteration, mutilation or destruction.
9. The Act does not require SCCMHA to create a new public record or make a compilation or summary of information 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.
10. If SCCMHA does not have the document requested, SCCMHA 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 SCCMHA'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 333.1001 *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 SCCMHA'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 SCCMHA's CEO or
  - b. Commence a civil action in Shiawassee County Circuit Court within (180) one hundred eighty days of the requestor's receipt of SCCMHA's final determination.
4. In the event SCCMHA's CEO receives an appeal of a FOIA denial, he or she shall within (10) ten 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
  - d. Issue a one-time notice extending the response period for up to (10) business days
5. Requestors may also appeal the imposition of fee by SCCMHA to the extent that such fee exceeds the amount permitted under this procedure. Such appeal may be made to the CEO, in the same manner as denial appeals described above, or may be made to the Shiawassee County Circuit Court within (45) forty-five days of the receipt of the final determination (or CEO's determination upon appeal).
6. Pursuant to an appeal of excessive fees, the CEO shall within (10) ten business days provide a written response to the requestor either:
  - a. Waiving the contested fee
  - b. Reducing the fee
  - c. Upholding the fee
  - d. Issuing a one-time notice extending the response period for up to (10) ten business days

D. Reimbursement of Cost

1. SCCMHA may charge the requestor fees as reimbursements for costs incurred

pursuant to a granted (or partially granted) FOIA Request, in compliance with FOIA. SCCMHA may recover costs only on the (6) six 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. SCCMHA fees for the above cost-reimbursed services shall be as indicated in the Fee Itemization Schedule attached hereto as Exhibit A. 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 shall be at the lowest paid employee rate for a SCCMHA 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 (6) six times the state minimum hourly wage rate determined by the Workforce Opportunity Wage Act (MCL 408.411 et seq.). Refer to Exhibit A 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 SCCMHA 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 be the requestor, in writing.
4. The fee for duplication of paper records shall not exceed \$0.10 per 8 ½ x 11 sheet of paper. SCCMHA shall utilize the most economical means available for making copies.
5. In the event SCCMHA 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 cost before SCCMHA begins processing the FOIA Request or provides the public records. All deposits requested must include the public body's cost calculations

on the required form.

6. SCCMHA may, in its sole discretion, waive or reduce of the fee if SCCMHA 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 proposed 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. An Affidavit of Indigence is attached hereto as Exhibit B. An individual may not invoke this discount if the individual has previously received discounted copies of public records from SCCMHA 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 a discount, SCCMHA shall inform the requestor specifically of the reason for ineligibility. If the requestor is eligible, SCCMHA shall fully note 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 SCCMHA's website.
9. In the event that SCCMHA fails to respond to a FOIA Request within the statutorily allotted (5) five business days, SCCMHA 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.

#### E. Availability of Policy and Procedure

1. SCCMHA will makes this Policy and Procedure document and the Written Public Summary publicly available without charge. If it does not, SCCMHA cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance.
2. A copy of this Policy and Procedures document and SCCMHA's Written Public Summary must be publicly available by providing free copies both in SCCMHA's response to a written request and upon request by visitors at SCCMHA offices.
3. This policy and procedures document and SCCMHA's Written Public Summary will be maintained on SCCMHA's website at: [www.shiacmh.org](http://www.shiacmh.org), so a link to those documents will be provided in lieu of providing paper copies of those documents.

## **MONITORING AND REVIEW**

This procedure shall be reviewed annually by the Corporate Compliance Committee. Compliance with this procedure shall be monitored through internal quality improvement reviews and committees, and external reviews by accrediting organizations.

## **REFERENCES**

1. Michigan Freedom of Information Act, MCL 15.231, *et seq*, Act 442 of the Public Acts of 1976 as revised
2. Michigan Mental Health Code, (MCL 330.1001 *et seq*, PA 258 of 1974), as revised
3. Michigan Public Health Code (MCL 333.1101 *et seq*).
4. Health Insurance Portability and Accountability Act (HIPAA) of 1996.
5. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2).

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Executive Director

Date