

Subject: Freedom of Information Act
Policy/Procedure No:
Department No: 60

Effective Date: 05/20/2016
Prepared By: Rebecca Dehaan

POLICY:

It is the policy of Thornapple Manor that all persons are entitled to full and complete information regarding governmental decision-making, consistent with the Michigan Freedom of Information Act (the “FOIA” or the “Act”).

For purpose of these procedures and guidelines, a “public record” means: a writing prepared, owned, used, in the possession of, or retained by Thornapple Manor in the performance of an official function, from the time it is created. Public record does not include computer software.

PROCEDURE:

1. General information

- All officers, employees, and agents of Thornapple Manor shall protect public records from loss, unauthorized alteration, mutilation, or destruction.
- The Controller/Corporate Compliance Officer is hereby designated the “FOIA Coordinator” with the authority and responsibilities stated in the Act and these procedures and guidelines.
- The FOIA Coordinator shall be responsible to accept and process all written requests for public records under the Act and shall be responsible for approving a denial under Section 5 of the Act (MCL 15.235).
- These procedures and guidelines regarding time frames, appeals, and fees do not apply to public records prepared for, or disclosed pursuant to another act or statute (i.e., requests for medical records made pursuant to the Public Health Code, or requests made pursuant to the Public Employment Relations Act or the Bullard-Plawecki Employee Right to Know Act, etc.).

2. Written requests

- All individuals desiring to inspect or receive a copy of a public record shall make a written request to the FOIA Coordinator that describes the public record sufficiently to enable the FOIA Coordinator, or his/her designee, to identify and locate the public record.
- The FOIA Coordinator, or any other designee, is not required to respond to oral requests for public records, but may do so for routine requests that can be granted immediately.
- If a written request is received directly by a Thornapple Manor employee other than the FOIA Coordinator, the original shall be promptly forwarded to the FOIA Coordinator. The date the Thornapple Manor employee receives the request shall be considered the date the request is validly received by Thornapple Manor for the purpose of determining when a response is due.
- A written request made by facsimile, electronic mail, or other electronic transmission is not received by the FOIA Coordinator until one business day after the electronic submission is made. If a request is delivered to a spam or junk mail folder, the request is not received by the FOIA Coordinator until one business day after it is discovered.

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- Upon receiving a written request for a public record pursuant to these procedures and guidelines, a person or entity has the right to inspect, copy, or receive copies of the requested public record(s), unless the requested public record is exempt from disclosure pursuant to Section 13 of the Act (MCL 15.243), as amended. If the exempt status of any request is questioned, legal counsel should be consulted. New public records, compilations, summaries, and/or reports of information shall not be created in response to a FOIA request.
- Upon request for public inspection, the FOIA Coordinator, or any other designee, shall furnish a requestor a reasonable opportunity for inspection and examination of the requested public records, subject to applicable exemptions, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during regular business hours.
- A requestor may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. Notwithstanding the foregoing, such stipulation must be within the technological capabilities of Thornapple Manor.
- A person or entity may subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to six months, at the request of the subscriber, and shall be renewable.
- If a requested public record may be obtained on Thornapple Manor's website or webpage, the FOIA Coordinator shall notify the requestor in writing of such availability and provide the direct internet address or link to obtain such public record. If, after receiving such written notification from the FOIA Coordinator, the requestor notifies Thornapple Manor that he or she continues to want Thornapple Manor to provide a copy of the available public record, in any format, Thornapple Manor shall process such request and may impose additional labor costs as specified within Article IV below.

3. Request processing

- When Thornapple Manor receives a written request for a public record, the FOIA Coordinator, or any other designee, shall, in not more than five (5) business days after Thornapple Manor receives the request, respond to the request by one of the following:
 - Grant the request.
 - Issue a written notice to the requestor denying the request.
 - Grant the request in part and issue a written notice to the requestor denying the request in part.
 - Issue a written notice extending, for not more than ten (10) business days, the period during which Thornapple Manor shall respond to the request.
- Any failure to respond to a written request as provided for above constitutes Thornapple Manor's determination to deny the request.
- Any written response denying a request for a public record, in whole or in part, is a final determination to deny the request or portion of that request. A denial response should contain the following:

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- An explanation of the basis under the Act or other statute for the determination that a public record(s) or portion(s) thereof, is exempt from disclosure, if that is the reason for denying all or part of a request.
- A statement that the public record(s) do not exist under the name/description given by the requestor or by another name reasonably known to Thornapple Manor.
- A description of a public record(s) or information on a public record that is separated or deleted if such separation or deletion is made.
- A full explanation of the requestor's right to either file an appeal with the Thornapple Manor Department of Human Services Board or seek judicial review of the denial pursuant to Section 10 of the Act (MCL 15.240).
- Notice that a requestor may receive attorneys' fees and damages pursuant to the Act if the Court determines that Thornapple Manor has not complied with Section 5 (MCL 15.235) of the Act and orders disclosure of all or a portion of a public record.

4. Deposit & fees

- Fees for responding to any request shall include duplication (copying) costs and mailing costs. Duplication (copying) costs shall be set from time to time by resolution of the Thornapple Manor Department of Human Services Board in an amount that does not exceed 10 cents per page (8½ x 11 and 8½ x 14). Thornapple Manor shall use the most economical method of duplication (*i.e.*, double-siding, etc.) and the least expensive form of postal delivery, unless a more expensive method is specifically requested by the FOIA requestor.
- The cost of hourly labor may also be charged if the failure to do so will result in unreasonably high costs to the Thornapple Manor because of the nature of the request in a particular instance. If such is the case, Thornapple Manor shall specifically identify the nature of these unreasonably high costs. For purposes of these procedures and guidelines, "unreasonably high costs" shall generally mean calculated labor costs that are estimated to exceed \$50.00, inclusive of salary or wage and fringe benefits.
- Labor costs shall include the cost of the search, examination, review, separation, and/or deletion of exempt information from non-exempt information in order to fulfill a request.
- Labor costs will be calculated using the wage of the lowest paid Thornapple Manor employee capable of searching for, locating, and examining the public record(s), regardless of whether that person is available or actually performs the labor. Labor costs shall be charged in increments of at least 15 minutes or more with all partial time increments rounded down. Thornapple Manor may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits. If it does so, it will clearly note the percentage multiplier used to account for benefits in the detailed itemization form. Subject to the 50% limitation, the Thornapple Manor shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Notwithstanding the foregoing, 100% of fringe benefit costs may be added to the applicable labor charge if a requestor is notified in writing that public records are available on the Thornapple Manor's website or webpage and the requestor continues to request that Thornapple Manor provide a copy, in any format, of the available public record.

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- Overtime wages shall not be included in the calculation of labor costs unless the requestor specifically approves the use of overtime in writing, and overtime wages are clearly noted in the detailed itemization form.
- If Thornapple Manor does not employ a person in-house who is capable of separating exempt from non-exempt information in a particular instance, as determined by the FOIA Coordinator, it may utilize an outside contractor. In those instances, Thornapple Manor shall clearly note the name of the contractor or firm on the detailed itemization form. The cost of the contractor's labor, including necessary review directly associated with separating and deleting exempt information from non-exempt information, shall not exceed an amount equal to 6 times the state minimum hourly wage rate.
- Thornapple Manor will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.
- Thornapple Manor may require a good faith deposit (not to exceed 50% of the total labor and duplication costs) from the requestor, if the total estimated fee exceeds fifty dollars (\$50.00). A request for a good faith deposit shall include a detailed itemization of the fee Thornapple Manor estimates or charges pursuant to the Act. Additionally, a request for a good faith deposit shall include a best efforts estimate regarding the time frame it will take to comply with the Act in providing the public records to the requestor. Thornapple Manor may require a one-hundred percent (100%) deposit from a requestor who has not previously paid a fulfilled FOIA request, provided the requirements in Section 5 of the Act are met.
- All fees and deposits calculated under these procedures and guidelines shall be listed within a detailed itemization form that shall be provided to the requestor. A copy of such form is attached hereto and incorporated by reference.
- Pursuant to Section 4(2) of the Act, Thornapple Manor shall search for and furnish a copy of a public record without charge for the first \$20.00 of the fee for each request made by either of the following:
 - An individual who is entitled to information under the Act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigence. If an individual is ineligible for a discount, then Thornapple Manor will inform the individual of the specific reason for the ineligibility in its written response. The right to financial assistance for indigent individuals shall not apply where:
 - an individual has received discounted copies of public records from Thornapple Manor twice during the calendar year; or
 - An individual requests information in conjunction with outside parties who are offering or providing payment, or other remuneration to the individual to make the request.
 - A non-profit 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, Public Law 106-402, and The Protection And Advocacy For Individuals With Mental Illness

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Act, Public Law 99-319, or their successors provided the following requirements are satisfied:

- The request is made directly on behalf of the organization or its clients;
 - the request is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931; and
 - The request is accompanied by documentation of its designation by the State, if requested by Thornapple Manor.
- Thornapple Manor may waive any charges if the FOIA Coordinator determines the cost is de Minimis. For purposes of these procedures and guidelines, “De Minimis” shall mean a calculated fee that is estimated to be less than \$10.00, inclusive of labor costs, duplication and mailing.

5. Fee dispute appeal

- If the requestor believes the fee estimated or charged for the request exceeds the amount permitted under these procedures and guidelines or Section 4 of the Act, the requestor is required to submit to the Thornapple Manor Department of Human Services Board a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under these procedures and guidelines or Section 4 of the Act.
- Within 10 business days after receiving a written appeal, the Thornapple Manor Department of Human Services Board shall do one of the following:
 - Waive the fee.
 - Reduce the fee and issue a written determination to the requestor indicating the specific basis under Section 4 of the Act that supports the remaining fee. The determination shall include a certification from the Thornapple Manor Department of Human Services Board that the statements in the determination are accurate and that the reduced fee complies with these procedures and guidelines and Section 4 of the Act.
 - Uphold the fee and issue a written determination to the requestor indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Thornapple Manor Department of Human Services Board that the statements in the determination are accurate and that the fee complies with these procedures and guidelines and Section 4 of the Act.
 - Issue a notice extending, for not more than 10 business days, the period during which Thornapple Manor Department of Human Services Board shall respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Thornapple Manor Department of Human Services Board shall not issue more than one notice of extension for a particular written appeal.
- If a requestor disagrees with Thornapple Manor’s determination, the requestor may comment an action in Circuit Court in the County in which Thornapple Manor is located, within 45 days of the Thornapple Manor’s determination, to seek a fee reduction.

6. Right to appeal a denial of a public record request

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- If a requestor desires to appeal a denial of a request for a public record, in whole or in part, the requestor may submit a written appeal to the Thornapple Manor Department of Human Services Board or may seek judicial review of the denial, pursuant to Section 10 of the Act (MCL 15.240). A written appeal to the Thornapple Manor Department of Human Services Board shall specifically state the word “appeal” and identify the reason(s) for reversal of the denial.
- Within 10 business days after receiving a written appeal, the Thornapple Manor Department of Human Services Board shall do one of the following:
 - Reverse the disclosure denial.
 - Issue a written notice to the appellant upholding the denial.
 - Reverse the denial in part and issue a written notice to the appellant upholding the denial in part.
 - Under unusual circumstances, issue a notice extending, for not more than 10 business days, the period during which the Thornapple Manor Department of Human Services Board shall respond to the written appeal. The Thornapple Manor Department of Human Services Board shall not issue more than 1 notice of extension for a particular written appeal.
- Thornapple Manor Department of Human Services Board is not considered to have received a written appeal until its next regularly scheduled meeting after the appeal is submitted.
- Any failure to respond to an appeal shall be considered a decision to uphold the denial. If an appeal is denied in whole or in part by the Thornapple Manor Department of Human Services Board the appellant may seek judicial review of the nondisclosure by commencing an action in Circuit Court in the County in which Thornapple Manor is located.

F-TAG:

Note: Policies, procedures and protocols are developed to address usual and customary events. No policy, procedure or protocol can cover every possible situation or circumstance. As a result, deviations from this policy may occur based on unique or unusual circumstances.

Pursuant to Section 4 of the Michigan Freedom of Information Act, MCL 15.234 (the “FOIA” or the “Act”), the following costs will be charged for responses to FOIA requests, pursuant to the FOIA Fee Schedule adopted and periodically revised by Thornapple Manor.

Y / N (circle one): A fee for labor cost is being charged because the failure to do so will result in unreasonably high costs to Thornapple Manor because of the nature of the request in this particular instance. Specifically,

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Labor costs shall not be more than the hourly wage of the Thornapple Manor's lowest-paid employee capable of performing the labor in the particular instance, regardless of whether that person is available or actually performs the labor. Labor costs will be estimated and charged in 15 minute time increments. All partial time increments will be rounded down. No overtime will be charged unless the person making the request provides written approval. If the number of minutes is less than 15, there will be no charge. If Thornapple Manor charges to cover or partially cover the cost of fringe benefits, it will use a 30% percent multiplier to account for those benefits.ⁱ

1. LABOR COST TO LOCATEⁱⁱ		
Hourly Wage Charged = \$ _____.	It is estimated to take [_____] minutes to perform this task ÷ [_____] minute increments = ____ increment(s).	Subtotal Cost = \$ _____
OT Wages (as Stipulated by the Requestor) = \$ _____		
Charge per increment = \$ _____.		
or		
Hourly Wage with Fringe Benefit Cost = \$ _____.		
Charge per increment = \$ _____.		

2. LABOR COST TO COPYⁱⁱⁱ		
Hourly Wage Charged = \$ _____.	It is estimated to take [_____] minutes to perform this task ÷ [_____] minute increments = ____ increment(s).	Subtotal Cost = \$ _____
OT Wages (as Stipulated by the Requestor) = \$ _____		
Charge per increment = \$ _____.		
or		
Hourly Wage with Fringe Benefit Cost = \$ _____.		
Charge per increment = \$ _____.		

3. EMPLOYEE LABOR COST TO SEPARATE EXEMPT FROM NON-EXEMPT MATERIAL^{iv}		
Hourly Wage Charged = \$ _____.	It is estimated to take [_____] minutes to perform this task ÷ [_____] minute increments = ____ increment(s).	Subtotal Cost = \$ _____
Charge per increment = \$ _____.		
or		
Hourly Wage with Fringe Benefit Cost = \$ _____.		
Charge per increment = \$ _____.		

4. CONTRACTED LABOR COST TO SEPARATE EXEMPT FROM NON-EXEMPT MATERIAL^v		
Name of contracted person or firm = _____		
Hourly Wage Charged = \$ _____.	It is estimated to take [_____] minutes to perform this task ÷ [_____] minute increments = ____ increment(s).	Subtotal Cost^{vi} = \$ _____
Charge per increment = \$ _____.		
or		
Hourly Wage with Fringe Benefit Cost = \$ _____.		
Charge per increment = \$ _____.		

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5. COPYING (DUPLICATION OR PRINTING) COST ^{vii}		
Letter (8 1/2 x 11-inch, single- or double-sided): ___ cents per sheet	Number of sheets = _____	Cost = \$ _____
Legal (8 1/2 x 14-inch, single- or double-sided): ___ cents per sheet	Number of sheets = _____	Cost = \$ _____
Other paper sizes (single- or double-sided): ___ cents per sheet	Number of sheets = _____	Cost = \$ _____
Actual and most reasonably economical cost of non-paper physical digital media (or being provided to the requestor in such format as stipulated) = \$ _____ <i>Circle applicable:</i> Disc / Tape / Drive / Other Digital Medium Cost per Item:	Number of items = _____	Cost = \$ _____
Subtotal Cost = \$ _____		

6. MAILING COST ^{viii}		
	Number of envelope(s), package(s), stamp(s), etc.	
Cost of Envelope or Package = \$ _____	_____	Cost = \$ _____
Postage = \$ _____ per stamp.	_____	Cost = \$ _____
Postage = \$ _____ per pound.	_____	Cost = \$ _____
Postage = \$ _____ per package.	_____	Cost = \$ _____
Postal Delivery Confirmation = \$ _____.	_____	Cost = \$ _____
Expedited Shipping or Insurance, if requested = \$ _____.	_____	Cost = \$ _____
Subtotal Cost = \$ _____		

Affidavit of Indigency Submitted? <u>Y / N</u> ^{ix} Qualified Non-Profit Organization per Section 4(2)(f)(2)(b) of the FOIA? <u>Y / N</u>	If Yes, subtract \$20.00	(\$ _____)
TOTAL ESTIMATED FEE = \$ _____		
If the estimated cost exceeds \$50.00, a good faith deposit of 50% is required before the request will be processed.	50% Deposit = \$ _____.	Date Paid = ____/____/____.
The request will be processed, but the balance of the cost must be paid before copies may be picked up, delivered, or mailed.	Balance Due = \$ _____.	Date Paid = ____/____/____.

¹Please note, 100% of fringe benefit costs will be added to the applicable labor charge if a requestor is notified in writing that public records are available on Thornapple Manor's website or webpage and the requestor continues to request that Thornapple Manor provide a copy, in any format, of the available public record.

¹ This is the cost of labor directly associated with the necessary searching for, locating, and examining public records in conjunction with receiving and fulfilling a granted written request.

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¹ This is the cost of labor directly associated with duplication of publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the Internet or other electronic means as stipulated by the requestor.

¹ This is the cost of labor of an in-house, Thornapple Manor employee, including necessary review, directly associated with separating and deleting exempt from nonexempt information.

¹ As this Thornapple Manor does not employ a person in-house who is capable of separating exempt from non-exempt information in this particular instance, as determined by the FOIA Coordinator, this is the cost of labor of a contractor (i.e., outside attorney), including necessary review, directly associated with separating and deleting exempt information from nonexempt information. The Thornapple Manor will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

¹ This amount shall not exceed six (6) times the State minimum hourly wage rate.

¹ Copying costs may be charged if a copy of a public record is requested, or for the necessary copying of a record for inspection (i.e., to redact exempt information, to protect old or delicate original public records, or because the original public record is a digital file or database not available for public inspection). No more than the actual cost of a sheet of paper will be charged, up to maximum 10 cents per sheet. Whenever feasible double-sided printing will be utilized.

¹ The Thornapple Manor will charge the actual cost of mailing, if any, for sending records in a reasonably economical and justifiable manner. The Thornapple Manor will not charge more for expedited shipping or insurance unless specifically requested by the requestor. The Thornapple Manor may charge for the least expensive form of postal delivery confirmation.

¹ Persons establishing indigence (i.e. affidavit that the individual is receiving specific public assistance, or if not stating facts showing an inability to pay) and nonprofit organizations formally designated by the State of Michigan to carry out activities under Developmental Disabilities Assistance and Bill of Rights Act, Public Law 106-402 or the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-139, are entitled to a discount. If a requestor is ineligible for the discount, the Thornapple Manor shall inform the requestor specifically of the reason for ineligibility in its written response.

ⁱ Please note, 100% of fringe benefit costs will be added to the applicable labor charge if a requestor is notified in writing that public records are available on Thornapple Manor's website or webpage and the requestor continues to request that Thornapple Manor provide a copy, in any format, of the available public record.

ⁱⁱ This is the cost of labor directly associated with the necessary searching for, locating, and examining public records in conjunction with receiving and fulfilling a granted written request.

ⁱⁱⁱ This is the cost of labor directly associated with duplication of publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the Internet or other electronic means as stipulated by the requestor.

^{iv} This is the cost of labor of an in-house, Thornapple Manor employee, including necessary review, directly associated with separating and deleting exempt from nonexempt information.

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^v As this Thornapple Manor does not employ a person in-house who is capable of separating exempt from non-exempt information in this particular instance, as determined by the FOIA Coordinator, this is the cost of labor of a contractor (i.e., outside attorney), including necessary review, directly associated with separating and deleting exempt information from nonexempt information. The Thornapple Manor will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

^{vi} This amount shall not exceed six (6) times the State minimum hourly wage rate.

^{vii} Copying costs may be charged if a copy of a public record is requested, or for the necessary copying of a record for inspection (i.e., to redact exempt information, to protect old or delicate original public records, or because the original public record is a digital file or database not available for public inspection). No more than the actual cost of a sheet of paper will be charged, up to maximum 10 cents per sheet. Whenever feasible double-sided printing will be utilized.

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^{ix} Persons establishing indigence (i.e. affidavit that the individual is receiving specific public assistance, or if not stating facts showing an inability to pay) and nonprofit organizations formally designated by the State of Michigan to carry out activities under Developmental Disabilities Assistance and Bill of Rights Act, Public Law 106-402 or the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-139, are entitled to a discount. If a requestor is ineligible for the discount, the Thornapple Manor shall inform the requestor specifically of the reason for ineligibility in its written response.