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<b>Title</b>	<b>Northern Lakes CMHA Policies</b>
<b>Part 106</b>	<b>Supports and Services – NLCMHA Provided and Contract</b>
<b>Subpart A</b>	<b>General</b>
<b>Policy No.</b>	<b>106.109</b>
<b>Subject</b>	<b>Freedom of Information Act (FOIA)</b>

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## **Applicability**

Policy applies to all Northern Lakes CMHA activities, operations, and sites and to all employees except members of the Northern Lakes CMHA Board of Directors. Policy also applies to all contract and network providers, its employees, volunteers, or agents under the terms of its Participating Provider Agreement.

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## **Policy**

It is the policy of the Northern Lakes Community Mental Health Authority (NLCMHA) that all persons, except those who are serving a sentence of imprisonment, 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 fully participate in the democratic process.

### **Section 1: General Policies**

The Northern Lakes Community Mental Health Authority Board of Directors acting pursuant to the authority at MCL 15.236 designates NLCMHA's Chief Executive Officer as NLCMHA's FOIA Coordinator. He or she is authorized to designate other NLCMHA staff to act on his or her behalf to accept and process written requests for NLCMHA's and its Departments' public records and approve denials.

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. If a request is sent by e-mail and delivered to a spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the 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.

The FOIA Coordinator, or his or her designee, shall review NLCMHA spam and junk-mail folders on a regular basis, which shall be no less than once a month. NLCMHA Information Technology staff to develop administrative rules for handling spam and junk mail so as to protect NLCMHA's systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

NLCMHA is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other NLCMHA staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by NLCMHA on file for a period of at least one year.

NLCMHA will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. If it does not, NLCMHA cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance.

A copy of this Procedures and Guidelines document and NLCMHA's Written Public Summary must be publicly available by providing free copies both in NLCMHA's response to a written request and upon request by visitors at any NLCMHA office.

This Procedures and Guidelines document and the NLCMHA's Written Public Summary will be maintained on the NLCMHA website at: [www.northernlakescmh.org](http://www.northernlakescmh.org) and a link to those documents will be provided in lieu of providing paper copies of those documents in NLCMHA's response to a written request.

## **Section 2: Requesting a Public Record**

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by NLCMHA must do so in writing. The request must sufficiently describe a public record so as to enable NLCMHA's personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available a FOIA Request Form for use by the public. Verbal requests for records may be documented by NLCMHA on the NLCMHA's FOIA Request Form.

Written requests for public records may be submitted in person or by mail to any NLCMHA office. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

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. NLCMHA will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by NLCMHA on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on NLCMHA's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A person serving a sentence of imprisonment in a local, state, or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **Section 3: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request NLCMHA will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day.

NLCMHA will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request NLCMHA needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on NLCMHA's website.

#### ***When a request is granted or granted in part:***

If the request is granted, or granted in part, 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. A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the NLCMHA's website [www.northernlakescmh.org](http://www.northernlakescmh.org), then a website link to those documents may be provided in lieu of providing paper copies.

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.

If based on a good-faith calculation by NLCMHA, the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not fully paid for a previously granted request, NLCMHA 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 requestor with a detailed itemization of the allowable costs estimated to be incurred by NLCMHA to process the request and also provide a best efforts estimate of a time frame it will take NLCMHA to provide the records to the requestor. The best efforts estimate shall be nonbinding on NLCMHA, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

***When a request is denied or denied in part:***

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by NLCMHA; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the office of the Northern Lakes Community Mental Health Authority Board of Directors or seek judicial review in the Grand Traverse County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

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 described in this Section.

***Requests to inspect public records:***

NLCMHA 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 NLCMHA's records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal NLCMHA operations.

***Requests for certified copies:***

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

**Section 4: Fee Deposits**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation by NLCMHA, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not fully paid NLCMHA 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:

- the final fee for the prior written request is not more than 105% of the estimated fee;

- the public records made available contained the information sought in the prior written request and remain in NLCMHA's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by NLCMHA to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to NLCMHA; and
- the FOIA Coordinator has calculated a detailed itemization which is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- the person making the request is able to show proof of prior payment in full to NLCMHA;
- NLCMHA is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to NLCMHA.

### **Section 5: Calculation of Fees**

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 NLCMHA because of the nature of the request in the particular instance, and NLCMHA specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to NLCMHA:

- Volume of the public record requested.
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one NLCMHA department or various NLCMHA offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

NLCMHA may charge for the following costs associated with processing a FOIA request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to NLCMHA.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to NLCMHA.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on NLCMHA's website if you ask NLCMHA to make copies.

- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on NLCMHA's website if you ask NLCMHA to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid NLCMHA employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. NLCMHA 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.
- Contracted labor costs incurred in the separation and deletion of exempt from non-exempt material will be charged at 6 times the state minimum wage, as adjusted. The current rate at the time of adoption of these Policies and Guidelines is \$48.90/hour.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if NLCMHA has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of NLCMHA's technological infrastructure, NLCMHA will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for nonstandard sized sheets of paper will reflect the actual cost of reproduction.
- NLCMHA may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- NLCMHA may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, NLCMHA must:

- Reduce the labor costs by 5% for each day NLCMHA 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.
- Fully note the charge reduction in the Detailed Itemization of Costs Form

## **Section 6: Waiver of Fees**

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public. The Northern Lakes Community Mental Health Authority Board of Directors may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

## **Section 7: Discounted Fees**

### ***Indigence***

The FOIA Coordinator will discount 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:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from NLCMHA twice during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

### ***Nonprofit organization advocating for developmentally disabled or mentally ill individuals***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization designated to 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, or their successors, if the request meets all of the following requirements:
  - is made directly on behalf of the organization or its clients;
  - 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;
  - is accompanied by documentation of its designation by the State, if requested by NLCMHA or FOIA Coordinator.

### **Section 8: Appeal of a Denial of a Public Record**

When a requestor 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 with the Office of the Northern Lakes Community Mental Health Authority Board of Directors. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. NLCMHA may create a FOIA Appeal Form that may be used.

The Board of Directors is not considered to have received a written appeal until the first regularly scheduled Board of Directors meeting immediately following submission of the written appeal.

Within 10 business days of receiving the appeal the Board of Directors, acting through its designee, will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the Board of Directors may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

If the Board of Directors fails to timely respond to a written appeal, or if the Board of Directors upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in the Grand Traverse County Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the Board of Directors, he or she may file a civil action in the Grand Traverse County Circuit Court within 180 days after NLCMHA's final determination to deny the request.

If the Court determines that the public record is not exempt from disclosure, the Court will award the appellant reasonable attorneys' fees, cost and disbursements. If the Court determines that the appellant prevails only in part, the Court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.



If the Court determines that NLCMHA arbitrarily and capriciously violated the FOIA by refusing or delaying the disclosure of copies of a public record, it shall award the appellant punitive damages in the amount of \$1,000. The Court shall also order that the public body pay a civil fine of \$1000 to the general fund of the State treasury.

### **Section 9: Appeal of an Excessive FOIA Processing Fee**

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by NLCMHA 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 Office of the Board of Directors. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. NLCMHA may create a FOIA Fee Appeal Form that may be used.

Within 10 business days after receiving the appeal, the Board of Directors, through its designee, will respond in writing by:

- waiving the fee;
- reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Board of Directors will respond to the written appeal.

Within 45 days after receiving notice of the Board of Directors' determination of a fee appeal, a requestor may commence a civil action in Grand Traverse County Circuit Court for a fee reduction. If a civil action is filed appealing the fee, NLCMHA is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the Court determines that NLCMHA required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the Court shall reduce the fee to a permissible amount. Failure to comply with an order of the Court may be punished as contempt of Court.

If the requesting person prevails in Court 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 NLCMHA.

If the Court determines that NLCMHA has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the Court shall order the Authority 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.

## **Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by NLCMHA, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of these Procedures and Guidelines is found to be in conflict with any previous policy promulgated by NLCMHA, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines 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. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by NLCMHA and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law.

The FOIA Coordinator shall inform the Board of Directors of any change to these Policies and Guidelines. These FOIA Policies and Guidelines become effective July 1, 2015.

## **Section 11: Appendix of Northern Lakes Community Mental Health Authority FOIA Forms**

- Request for Public Records Form
- Notice to Extend Response Time Form
- Notice of Denial Form
- Detailed Cost Itemization Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form

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**Adoption Date:** November 9, 2021

**Review Dates:**

**Revision Dates:**