

## **Benzie County Council on Aging**

### **FOIA Procedures and Guidelines**

#### **Preamble: Statement of Principles**

It is the policy of Benzie County Council on Aging that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The Benzie County Council on Aging's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Benzie County Council on Aging acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Benzie County Council on Aging acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

Benzie County Council on Aging will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Benzie County Council on Aging's policy is to disclose public records consistent with and in compliance with State law.

The Benzie County Council on Aging Board has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

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

The Benzie County Council on Aging Board, acting pursuant to the authority at MCL 15.236, designates the Fiscal Manager as the FOIA Coordinator. He or she is authorized to designate other Benzie County Council on Aging staff to act on his or her behalf to accept and process written requests for the Benzie County Council on Aging's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a Benzie County Council on Aging 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 shall review Benzie County Council on Aging spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with Benzie County Council on Aging Information Technology Consultants to develop administrative rules for handling spam and junk-mail so as to protect Benzie County Council on Aging 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.

The Benzie County Council on Aging 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 Benzie County Council on Aging 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 the Benzie County Council on Aging on file for a period of at least one year.

The Benzie County Council on Aging will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. If it does not, the Benzie County Council on Aging 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 the Benzie County Council on Aging's Written Public Summary must be publicly available by providing free copies both in the Benzie County Council on Aging's response to a written request and upon request by visitors at the Benzie County Council on Aging's office.

***Include the following if the Benzie County Council on Aging directly or indirectly administers or maintains an official internet presence:*** This Procedures and Guidelines document and the Benzie County Council on Aging's Written Public Summary will be maintained on the Benzie County Council on Aging's website at: , so a link to those documents will be provided in lieu of providing paper copies of those documents.

## **Section 2: Requesting a 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.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Benzie County Council on Aging may be submitted on the Benzie County Council on Aging's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.

Verbal requests for records may be documented by the Benzie County Council on Aging on the Benzie County Council on Aging's FOIA Request Form.

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

A request must sufficiently describe a public record so as to enable Benzie County Council on Aging personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail to any Benzie County Council on Aging office. Requests may also be submitted electronically by fax and email. 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, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The Benzie County Council on Aging 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 Benzie County Council on Aging on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

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, the Benzie County Council on Aging will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The Benzie County Council on Aging will respond to a 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 the Benzie County Council on Aging needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Benzie County Council on Aging's website.

#### ***When a request is granted:***

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 and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records\*, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the Benzie County Council on Aging's website at: [www.benziecoa.org](http://www.benziecoa.org), a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents. (***\*If the Benzie County Council on Aging does not maintain the Procedures and Guidelines and the Written Public Summary on a Benzie County Council on Aging website, then end the sentence above at the asterisk\*.***)

There is no cost to process a FOIA request.

#### ***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 the Benzie County Council on Aging; 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 Benzie County Council on Aging Supervisor (*or “clerk,” or “manager” etc.*) or seek judicial review in the Benzie County Circuit Court;
- 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:***

The Benzie County Council on Aging 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 Benzie County Council on Aging records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Benzie County Council on Aging 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**

There is no cost to process a FOIA

**Section 5: Calculation of Fees**

There is no cost to process a FOIA request

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 the Benzie County Council on Aging has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Benzie County Council on Aging will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the Benzie County Council on Aging’s technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements: There is no cost to process a FOIA request

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.
- The Benzie County Council on Aging may charge for the least expensive form of postal delivery confirmation.

- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Benzie County Council on Aging must:

- Reduce the labor costs by 5% for each day the Benzie County Council on Aging exceeds the time permitted under FOIA up to a 50% maximum reduction, if *any* of the following applies:
  - The Benzie County Council on Aging’s late response was willful and intentional,
  - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
  - 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 email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

**Section 6: Waiver of Fees** There is no cost to process a FOIA request

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 it can be considered as primarily benefitting the general public. The Benzie County Council on Aging board 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** There is no cost to process a FOIA request

**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 appeal to the Benzie County Council on Aging Board by filing an appeal of the denial with the office of the Benzie County Council on Aging Supervisor (*or “clerk” or “FOIA Coordinator,” etc.*).

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. The Benzie County Council on Aging FOIA Appeal Form (To Appeal a Denial of Records), may be used.

The Benzie County Council on Aging Board is not considered to have received a written appeal until the first regularly scheduled Benzie County Council on Aging Board meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the Benzie County Council on Aging Board 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; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Benzie County Council on Aging Board shall respond to the written appeal. The Benzie County Council on Aging Board shall not issue more than 1 notice of extension for a particular written appeal.

If the Benzie County Council on Aging Board fails to respond to a written appeal, or if the Benzie County Council on Aging Board 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 Circuit Court.

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

If a court that determines a public record is not exempt from disclosure, it shall order the Benzie County Council on Aging to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Benzie County Council on Aging prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the Benzie County Council on Aging has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Benzie County Council on Aging to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The 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 Benzie County Council on Aging Board or the Benzie County Council on Aging Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the Benzie County Council on Aging Board or the Benzie County Council on Aging Administration, 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 the Benzie County Council on Aging Board or the Benzie County Council on Aging Administration, 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 Benzie County Council on Aging Board of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

#### **Section 11: Appendix of Benzie County Council on Aging 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