A RECOGNIZED BICENTENNIAL COMMUNITY
17431 112th Ave. P.O. Box 186 Nunica, MI 49448
Phone: (616) 837-6868 Fax: (616) 837-7838
www.crockery-township.org

FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES (THE "PROCEDURES")

I. INTRODUCTION

The Freedom of Information Act, being Mich Public Act 442 of 1976 ("FOIA"), mandates disclosure of most public records. To fulfill this mandate, the Township has established this policy and procedure for handling FOIA requests to ensure that members of the public receive non-exempt Township public records that they may request, while not unduly burdening Township government.

II. FOIA COORDINATOR

The Township Board has designated the Township Clerk to serve as the FOIA Coordinator. Any questions regarding compliance with FOIA should be directed to the FOIA Coordinator. For administrative convenience, the FOIA Coordinator may designate an individual to act on his or her behalf in accepting and processing requests for the records of the Township.

III. FOIA REQUESTS

A. Requests for Copies of Public Records. All requests for public records (either to receive copies of such records or to inspect such records) made pursuant to FOIA shall be made in writing. In the event a written FOIA request is received by any employee of the Township or member of the Township Board, a copy of the request shall be provided to the FOIA Coordinator promptly after it is received. All written requests for records pursuant to FOIA shall be processed by the FOIA Coordinator.

B. Requests to Review Records. If a request is received to review records, means should be made available to inspect records during the Township's normal business hours and when the records can reasonably be made available. The person who wishes to inspect public records shall submit a request form describing the requested records prior to the Township allowing the inspection of the records.

C. Requests Made by Fax, E-mail or other Electronic Means. These requests shall be deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made and shall be handled in the same manner as a written request in subparagraph A above. If the request is submitted by e-mail

and the e-mail request is held or quarantined in the Township's "spam" or "junk" e-mail folder (or other similar virus-protection software), the request shall be deemed received one business day after the Township first became aware of the request. The FOIA Coordinator shall maintain a written log of when the request is delivered to the "spam" or "junk" e-mail folder and when the Township becomes aware of the request in the folder.

D. Informal Request

1. The FOIA coordinator or Township staff may provide limited, readily identifiable public records without a written request the in case of easily fulfilled, non-repetitive requests for information. Examples of documents which may be provided without the necessity of a written FOIA request include, but are not limited to:

   a. For an individual: Such documents which according to law are to be made available without the necessity of a FOIA request, such as entries in the current Township property tax assessment roll and a property tax assessment card.

   b. A single set of meeting minutes for a meeting held within the prior 12 months which is requested by specific date.

   c. Ordinances which are identified by specific name or number.

   d. Similar public records which can be readily provided.

2. Township staff has the discretion to require a formal FOIA request.

3. Oral requests fulfilled under this Section 3 are not considered made under or subject to FOIA. Requesters have the option to make a written FOIA request, if so desired, in accordance with these Procedures.

IV. PROCESSING FOIA REQUESTS

The FOIA Coordinator shall maintain a log of all written requests received, showing the nature and date of the request, determination of disposition, date of disposition and manner of final response to the FOIA request. Requests shall sufficiently describe the public record to enable the FOIA Coordinator to identify and locate the record. Forms for utilization of FOIA procedures under these Procedures are available from the FOIA Coordinator.

A. Time for Response. The FOIA Coordinator shall, no more than five business days after the request has been made, unless a single extension of not more than ten business days has been issued, or where the time limits have been agreed to upon in writing by the requesting person, provide one of the following responses:

1. Grant the Request. If the requested public records are not exempt from disclosure, the FOIA Coordinator shall submit copies of them to the

requesting person, together with a Township response form and a copy of the person's FOIA request.

2. Deny the Request. The FOIA Coordinator shall sign and send a response form to the requesting person, stating the reasons for denial, including an explanation of the requesting person's right to seek a non-mandatory appeal from the FOIA Coordinator's decision to the Township Board or an appeal of the decision to the Circuit Court. Failure to timely respond to the request constitutes a denial. Denial may be made because, among other reasons, the record does not exist, it cannot be sufficiently identified from the description contained in the request, or the record is exempt from disclosure.

3. Grant the Request in Part and Issue a Written Notice to the Requesting Person Denying Such a Request in Part. Public records which are partially exempt and partially subject to disclosure shall be separated or redacted, and the non-exempt material will be offered for copying or inspection. A general description of the separated or redacted information shall be provided to the requesting person, unless doing so would reveal the contents of the exempt information.

If the Township issues a notice of a 10-business-day extension, the notice shall include an estimate as to when the Township expects to respond to the FOIA request.

B. Miscellaneous General Requirements for FOIA Requests. FOIA requests shall be processed in one or more of the following ways:

1. Provide a reasonable opportunity and facilities for inspection of the public records by the requesting person.

   a. Original records shall not be marked, defaced, destroyed, or otherwise altered. A person examining public records may take notes and if so, shall bring to the examination only an erasable pencil with which to make notes. No pens or indelible writing instruments are allowed. No notes, marks or writing of any kind shall be made on the records themselves.

   b. A Township official or staff member shall be present at all times during the inspection of Township records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the Township's cost of this monitoring service, a fee shall be paid to the Township for the personnel time involved, as provided in Section V of these Procedures.

   c. Original records shall not be removed from the location provided for inspection. Original documents may be removed from and

replaced in Township files only by authorized Township officials or personnel.

d. A requesting person may not remove records or files from the area provided for inspection. Copying of records for the requesting person shall be conducted only by authorized Township officials or personnel.

e. The FOIA Coordinator shall determine, on a case-by-case basis, whether a requesting person may inspect an original public record, or only a copy of the record. A fee may be charged for copies made to enable public inspection of records, in accordance with Section V of these Procedures. Situations where original records are likely to require copying prior to inspection include the following:

(1) The records include exempt information that must be redacted.

(2) The records are old or delicate, or contain information that could not easily be replicated.

(3) The records are in digital format or are part of a database not available for public inspection.

(4) Providing copies would be less disruptive to the performance of Township functions than providing the necessary staffing for the oversight required for inspection of original records.

f. A person requesting to inspect Township records must make an appointment with the FOIA Coordinator. Appointments will be scheduled during the Township's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator.

g. The FOIA Coordinator will make reasonable efforts to allow a requesting person to inspect records for up to four hours per appointment; provided, however, that inspections will be cut short, postponed or rescheduled when necessary to avoid unreasonable interference with Township staff's duties and responsibilities.

2. Provide copies of records if so requested. If a fee is charged, a copy of the record shall not be released until a fee has been received or the person making the request demonstrates an inability to pay or is a recipient of public assistance as provided in Article V of these Procedures.

3. On a request for records which are issued on a subscription basis, such as Township Board meeting minutes on a six-month renewal subscription

basis, a listing of the requesting person's name, address, records subscribed to, charge and expiration date of subscription shall be maintained by the FOIA Coordinator or his/her designee.

4. The FOIA Coordinator, or his/her designee, shall determine actual cost of mailing, duplication and search time when compiling the records in accordance with Article V of these Procedures.

5. If fees are charged, the FOIA Coordinator, or his/her designee, shall compute the charges and complete the detailed itemization of the fees.

6. If it is anticipated that a charge will exceed $50.00, a good-faith deposit may be collected from the requesting person prior to the Township beginning to fulfill the request for the records.

    a. The deposit cannot exceed one-half of the total anticipated fees.

    b. The Township may require payment of a deposit equal to 100% of the estimated charge for fulfilling the FOIA request if the requesting person previously failed to pay the total amount due from a prior FOIA request to the Township if:

        (1) the final fee for the prior written request was not more than 105% of the estimated fee;

        (2) the public records made available contained the information being sought in the prior written request and are still in the Township's possession;

        (3) the public records were made available to the requesting person, subject to payment, within the time frame required under FOIA; 90 days have passed since the Township notified the requesting person in writing that the public records were available for pickup or mailing;

        (4) the requesting person is unable to show proof of prior payment to the Township for the prior records requested; and

        (5) the Township calculates a detailed itemization, as required under FOIA, that is the basis for the current written request's increased estimated fee deposit.

    c. The Township will not require an increased estimated fee deposit from a requesting person if any of the following apply:

        (1) the requesting person is able to show proof of prior payment in full to the Township; or

(2) The Township is subsequently paid in full for the applicable prior written request; or

(3) Three hundred sixty-five days have passed since the requesting person made the written request for which full payment was not remitted to the Township.

7. The FOIA Coordinator shall accept the payment for services rendered and issue a receipt for the same, or, in the few instances where deferred payment is indicated, prepare an invoice and forward it to the requesting person.

8. The FOIA does not require the Township to make a compilation, summary or report of the requested public records or other requested information.

9. In accordance with Section 4(5) of FOIA, if a requesting person requests Township records that are publicly available on the Township's website, the Township will notify the requesting person of the web address and location of such records. If the requesting person requests copies of these records, notwithstanding that the records are available on the website, the Township shall provide copies of such records and will charge for such records in accordance with Article V of these Procedures.

V. FEES AND COSTS

A. In General. The Township may charge the requesting person for a public record search, actual mailing costs, copying charges, and the cost to separate exempt from non-exempt records in accordance with this Article V if the failure to charge a fee would result in unreasonably high costs to the Township because of the nature of the request, and the Township specifically identifies the nature of the unreasonably high costs. It is hereby determined that devoting more than one-half hour to responding to a FOIA request will result in unreasonably high costs to the Township, unless the cost of such response is borne by the requesting person. The Township shall provide a written estimate of such charges.

1. Cost of Duplication of Records. The Township may charge for the labor costs directly associated with duplication of records, including making paper copies, making digital copies, or transferring digital public records to be given to the requesting person on non-paper physical media or through the Internet or other electronic means as stipulated by the requesting person.

2. Cost of Search, Location and Examination of Records. The Township may charge for the labor costs directly associated with searching for, locating, and examining public records in conjunction with receiving and fulfilling a FOIA request.

3. Cost of Separating Exempt from Non-Exempt Records. The Township may charge for the labor costs, including necessary review, if any, directly

associated with the separating and deleting of exempt material from nonexempt material. The review and separation of exempt from non-exempt material may be conducted by a Township official or employee or, if necessary, outside legal counsel.

a. For services performed by a Township official or employee, the Township will charge in accordance with Article V.A.4 of these Procedures.

b. For services performed by outside legal counsel, as determined by the FOIA Coordinator on a case-by-case basis, the Township may charge the legal counsel's time; provided, however, that such time to be charged shall not exceed an amount equal to six times the then-current State minimum hourly wage rate determined under Section 4 of the Workforce Opportunity Wage Act, Act 138 of the Public Acts of Michigan of 2014 ("Act 138"), as that rate may change from time to time. As of the date of adoption of these Procedures, that wage rate is $8.15 per hour. If the rate increases under Act 138, the rate charged under these Procedures shall automatically change without action by the Township Board or amendment of these Procedures. In charging such time for outside legal counsel, the Township shall provide notice to the requesting person of the name of the contracted person or firm in the Township's detailed itemization of costs required by the Act. The charges for such services will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward.

No charge will be made for the redaction of documents if the Township previously redacted the public record in question and the redacted version is still in the Township's possession.

The Township shall itemize both the hourly wage and the number of hours included in the costs charged.

4. Calculation of Labor Costs. The Township will charge the hourly wage of its lowest-paid employee capable of performing the tasks identified in V.A.(1), (2), or (3)a.), above, regardless of whether that person is available or who actually performs the labor. The Township will estimate such labor charges. The labor charges will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward. The Township shall itemize both the hourly wage and the number of hours charged for these costs. The Township shall include in the applicable labor charge an amount not to exceed one-half of the applicable hourly wage to cover (or partially cover) the cost of the fringe benefits (if any) for the lowest-paid employee; provided, however, that such amount shall not exceed the actual costs of the fringe benefits. Overtime charges for the applicable employee will not be charged unless the requesting person agrees in writing to pay such charges. The 50%

multiplier used to account for the lowest-paid employee's fringe benefits shall be included in the detailed itemization of costs provided by the Township to the requesting person.

B. Costs for Mailing of Records. The Township will charge the actual cost of mailing, if any, for sending the records in a reasonably economical and justifiable manner, to the requesting person. The Township will not send documents to the requesting person via overnight delivery service or expedited shipping (or obtain shipping insurance on such mailing) unless the requesting person specifically requests such services in writing and agrees to pay for such costs.

C. Copying Charges. The incremental costs of duplication or publication shall be charged at 10 cents per 8 1/2″ x 11″ or 8 1/2″ x 14″ sheet of paper. The Township may copy records using double-sided printing, if such capability is available and cost-effective. If the public records must be sent to a commercial copy center for copying, the requesting person shall reimburse the Township for the Township's actual charges.

D. Copies of Specialty Documents/Formats. The Township has limited in-house capabilities for copying photographs, audio- or video-tapes, microforms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site or reproduced in electronic means (and on an electronic storage device, such as a USB drive, CD-ROM, or other device for storage of electronic data), the FOIA Coordinator will determine and assess those costs. If a Township official or employee is required to deliver and/or pick up the public records and/or copies of public records, the labor hours (calculated in accordance with Article V.A.(4), above), spent and applicable mileage (at the then-current IRS mileage reimbursement rate) will be included in the requesting person's charges for the public records.

E. Fee Waiver. The Township may waive all or a portion of the fees for the search and copying of records if the Township determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee in case of indigency, or a non-profit agency formally designated to carry out the activities of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as provided in Section 4(2) of the Act.

VI. RECORD RETENTION

The FOIA Coordinator shall maintain all FOIA requests on file for at least than one year.

VII. EXEMPTIONS TO FOIA REQUEST

The FOIA coordinator shall exempt from disclosure any records identified as exempt from disclosure in Section 13 of the FOIA. The FOIA coordinator shall exempt from disclosure:

A. That portion of any public record disclosing a person's social security number.

B. Information protected under the Family Educational Rights and Privacy Act of 1974.

C. Minutes of any closed session meeting, disclosure of which is prohibited by the Open Meetings Act.

D. Any other public record, information or material, the disclosure of which is prohibited by law.

VIII. APPEALS

A. Appeal of Denial of Request. If a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the following:

1. The appeal must be submitted in writing to the Township Board, to the attention of the Township Supervisor.

2. The written appeal must specifically state the word "appeal" and identify the reason or reasons advanced for the reversal or modification of the denial.

3. If a written appeal is received by the Township Supervisor consistent with these Procedures and the Act, the Township Board shall either: (a) place the appeal on the agenda for the next regularly scheduled meeting, to be decided within ten business days thereafter; or (b) schedule a special meeting to consider the appeal, which special meeting should be held no later than ten business days following the next regularly scheduled meeting.

4. The Township Board may deliberate and shall take one of the following actions in response to the filing of an appeal:

   a. Reverse the denial.

   b. Issue a written notice to the requesting person, affirming the denial.

   c. Reverse the denial in part and issue a written notice to the requesting person affirming the denial in part.

   d. Under unusual circumstances, issue a notice extending not more than ten business days the period during which the Township Board shall respond to the written appeal. Only one written notice extending the response time is allowed.

B. Fee Appeal. A requesting person may appeal the amount of a fee if that fee exceeds the amount permitted under these Procedures and FOIA.

1. An appeal on the amount of the fee may be made to the Township Board in accordance with the provisions of Article VIII.A., above. In the fee appeal, the requesting person must specifically include the word "appeal" and identify how the required fee exceeds the amount permitted under these Procedures or the Act.

2. Notwithstanding B.1., above, and in accordance with FOIA, a requesting person may commence a civil action in the Circuit Court for a fee reduction; provided, however, that such appeal must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the Township Board. If the requesting person files a fee appeal with the Circuit Court, the Township will not complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

3. Within 10 business days after receiving a written appeal under this subsection B, the Township Board shall do one of the following:

   a. Waive the fee.

   b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 of FOIA and these Procedures that supports the remaining fee. The determination shall include a certification from the Township Supervisor, on behalf of the Township Board, that the statements in the determination are accurate and that the reduced fee amount complies with the Procedures and Section 4 of the Act.

   c. Uphold the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the Act that supports the required fee. The determination shall include a certification from the Township Supervisor, on behalf of the Township Board, that the statements in the determination are accurate and that the fee amount complies with the Procedures and Section 4 of the Act.

   d. Issue a notice extending for not more than 10 business days the period during which the Township Board must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Township Board shall not issue more than one notice of extension for a particular written appeal.

4. In accordance with FOIA, the Township Board is not considered to have received a written fee appeal until the first regularly scheduled meeting of the Township Board following submission of the written appeal.

5. In accordance with Section 4(13) of FOIA, a deposit required to be paid by the Township is considered a "fee."

C. Civil Action. An appeal from a determination by the FOIA Coordinator or from a decision of the Township Board may be taken to the Circuit Court.

IX. AMENDMENTS TO PROCEDURES

The Township Board may amend or supplement this policy, from time to time, in the Township Board's sole discretion.

X. AVAILABILITY OF PROCEDURES; SUMMARY

A copy of these Procedures and a summary of these Procedures shall be available at the Township office and shall be posted on the Township's website at www.crockery-township.org, in accordance with the FOIA.

XI. EFFECTIVE DATE

This Freedom of Information Act Procedures and Guidelines became effective on July 1, 2015.