

**St. Clair County Regional Education Service Agency (RESA)
Board of Education Policy**

Freedom of Information Act (FOIA)

The St. Clair County RESA is committed to complying with requests for public records in accordance with the provisions of the Michigan Freedom of Information Act (FOIA), including but not limited to, the posting of this policy and procedures on the RESA's website. All FOIA requests will be processed according to the requirements of FOIA and St. Clair County RESA policies and procedures.

The St. Clair County RESA Superintendent has designated the Director of Legal Services to undertake the duties of the FOIA Coordinator. The FOIA Coordinator is responsible for accepting and processing all FOIA requests and approving denials.

FOIA requests must be in writing and describe a public record sufficiently to enable the RESA to find the public record. All FOIA requests received by RESA employees must be forwarded to the FOIA Coordinator. The FOIA Coordinator shall inform the Superintendent of FOIA requests received. The FOIA Coordinator will keep a file copy of all FOIA requests for one year.

Requesting a FOIA

FOIA requests should be made in writing and addressed to:

FOIA Coordinator
St. Clair County RESA
499 Range Road, PO Box 1500
Marysville, Michigan 48040

or

Electronically:

FOIA Coordinator
sturtridge.jean@sccresa.org

The written FOIA request should be dated and signed by the requester, and include a return address. It is also helpful to provide a phone number and/or email address, so that, if necessary, the FOIA Coordinator may contact the requester to clarify a request.

The FOIA Coordinator shall establish the following reasonable guidelines:

1. Allow a person a reasonable opportunity to inspect and examine public records at reasonable facilities during regular business hours.
2. Assuring upon written request, the individual receives a physical copy of the public record either by providing physical copies or an electronic file.
3. Ensure the protection of public records from loss, unauthorized alteration, mutilation or destruction and to prevent excessive and unreasonable interference with the discharge of RESA functions.

Upon receipt of a written FOIA request, the FOIA Coordinator may, if deemed necessary, forward notice of the request, specifically describing each public record requested, to a Director within the School District who would maintain the public records requested (hereinafter “FOIA Notice”).

In the event notice of a FOIA is sent to Directors, the FOIA Coordinator shall include within each FOIA Notice the date in which the FOIA request is received as prescribed by the Act, as well as the date(s) in which a response is due, including both a response due within the five (5) days prescribed by the Act as well as the date in which a response is due pursuant to the ten (10) day extension.

Each Director shall have two (2) business days to respond to the FOIA Coordinator in one of the following ways:

1. Stating that the documents do not exist within his or her department.
2. Stating that some or all of the documents exist within his or her department and Provide those documents to the FOIA Coordinator.
3. Stating that a ten (10) day extension is required to search, review, and copy the documents requested.

If a Director requests a ten (10) day extension pursuant to the Act, the Director shall then provide the documents located or a statement that the documents do not exist within three (3) business days prior to the final date for the response as indicated in the FOIA Notice.

The FOIA Coordinator will respond within five (5) business days to a written request for a public document or record under the Freedom of Information Act in one of the following ways:

1. Grant the request and either provide the requested documents (and request payment in full or waive payment of the fee).
2. Issue a written notice to the requesting person denying the request.
3. Grant the request in part and issue a written notice to the requesting person denying the request in part.
4. Issue a notice extending for not more than ten (10) business days the period during which the FOIA Coordinator shall respond to the request.

If the FOIA Coordinator denies a request, the FOIA Coordinator will explain the reasons for denying the request which is either:

1. The public record is exempt from disclosure or;
2. The public record does not exist or;
3. Such other reason as permitted by law.

The FOIA Coordinator will inform the requesting party of the right to appeal the denial to the Board or seek judicial review. Notification of the right to judicial review must include:

1. Notification of the right to receive reasonable attorney fees, costs, and possible damages. If the requesting person submits a written appeal to the Board, the Board will have ten (10) business days from its next regularly scheduled meeting to decide whether to reverse or uphold the denial. The Board may, under unusual circumstances, issue a notice extending for not more than ten (10) business days the time to respond to the appeal.

Timely Response

If the RESA does not respond to a written request in a timely manner it shall:

1. Reduce the charges for labor costs by 5% for each day the RESA exceeds the time permitted if either of the following applies:
 - a. The late response was willful and intentional.
 - b. The written request included language that conveyed a request for information within the first 250 words of the body of the letter or envelope, facsimile, electronic mail, or electronic attachment, or abbreviation for the "Freedom of Information Act" (FOIA).

After the RESA has granted and fulfilled a written request for the requesting person under this act, if the RESA has not been paid in full the total amount for the requested public records; the RESA may require a deposit of 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

1. The final request for the prior written request was not more than 105% of the estimated fee.
2. The records requested are still in the RESA's possession.
3. The records were made available to the individual, subject to payment, within the time frame allowable.
4. Ninety days have passed since the RESA notified the individual in writing that the public records were available for pickup or mailing.
5. The individual is unable to show proof for prior payment in full to the RESA.
6. The RESA calculates a detailed itemization that is the basis for the current written request's increased estimation fee deposit.

The RESA shall no longer require an increased estimated fee deposit from an individual who;

1. Is able to show proof of prior payment in full to the RESA.
2. The RESA is subsequently paid in full for the applicable prior written request.
3. Three hundred sixty-five days (1 year) have passed since the individual made the written request for which full payment was not remitted to the RESA.

A written request made by facsimile, electronic mail, or other electronic transmission is not received by the FOIA Coordinator or District employee until one (1) business day after the transmission is made. However, if a written request is sent by electronic mail and delivered to a spam or junk-mail folder, the request is not received until one (1) day after the RESA first becomes aware of the written request. The RESA FOIA Coordinator shall note in its records both the time a written request is delivered to its spam or junk-mail folder and the time the RESA first became aware of the request.

Searching, Locating, and Examining Records

The RESA as a public body, may not charge more than the hourly wage of its lowest-paid employee capable of searching, locating, and examining public records, regardless of whether that person actually performs the labor. Labor costs may be estimated in time increments of 15 minutes or more. All partial increments must be rounded down.

Separating and Deleting Exempt Information

The RESA may not charge a fee for the cost of searching, examining, reviewing, and separating exempt and non-exempt information unless failing to charge a fee would result in unreasonable high costs to the RESA and the St. Clair County RESA identifies the nature of the unreasonable high costs.

1. The RESA may not charge more than the hourly wage of its lowest-paid employee capable of separating exempt and non-exempt information, regardless of whether that person actually performs the labor. RESA may not charge for redacting records if the RESA knows or reasonably should know that it possesses already-redacted records.
2. If the RESA does not employ a person capable of separating exempt and non-exempt document, it may treat contracted labor costs in the same manner as employee labor costs, if it clearly notes the name of the contracted firm or person. Total labor costs for contracted labor may not, however, exceed, “an amount equal to six (6) times the State of Michigan’s minimum hourly wage rate” under the Workforce Opportunity Wage Act.

Non-paper Copies

A requesting person may agree to non-paper physical copies of records instead of physical paper copies because the RESA has the technological capability to provide copies in that form. The RESA may charge the requesting person for the, “actual and most reasonable economic cost” of computer discs, tapes, or similar media.

Paper Copies

RESA may not charge more than 10 cents per copy of an 8 ½-by-11 inch or an 8 ½-by-14inch document. The RESA will utilize the most economic means of copying available, including double-sided printing.

Duplicating or Publishing Documents

The RESA may not charge more than the hourly wage of its lowest-paid employee capable of duplicating documents. Costs may be estimated in time increments of the public body’s choosing, but all partial increments must be rounded down.

Mailing

The actual cost of mailing public documents must be reasonable and justifiable. The RESA may charge for the least-expensive form of postal delivery confirmation and may not charge for expedited shipping or insurance unless specifically agreed to by the requester.

Calculating Hourly Labor Cost

When calculating hourly labor costs, overtime wages may not be included unless specifically agreed to by the requester. The RESA may add up to 50% to the labor charge amount to cover the cost of fringe benefits, but not more the actual cost of the fringe benefits, if it clearly notes the percentage multiplier used to calculate the benefits. Overtime wages may not be included in the calculating of fringe benefits.

Information Available on Website

If the information requested is available on the St. Clair County RESA's website, the RESA may notify the requester that the information is available on the website and provide the web address in its written response in lieu of providing copies. If the requester still requests copies of this information, the RESA will provide the copies but may charge a fee using a fringe multiplier benefit greater than the 50% limitation but not exceeding the actual cost of the fringe benefits.

Appeal of Excessive Fees

Requesting individuals may appeal excessive fees to the St. Clair County Board of Education. Within ten (10) days of receiving an appeal, the RESA must either:

1. Waive the fee;
2. Reduce the fee;
3. Uphold the fee;
4. or extend the time to respond by ten (10) business days.

Civil Action Dispute of Excessive Fees

Requesting individuals may also bring a civil action against the RESA to dispute excessive fees if any of the below are factual:

1. RESA procedures do not provide for fee appeals;
2. The RESA Board fails to respond to an appeal;
3. RESA issues a determination to the appeal.

The FOIA amendments increase the amount of civil fines and damages against public bodies for arbitrarily and capriciously violating the Act by delaying or refusing to provide copies of public records from \$500 to \$1,000 dollars.

Impose civil fines against public bodies for charging excessive fees. If a court finds a fee was unreasonable (i.e., a fee that unreasonable exceeds the amount properly calculated under the Act) and the court reduces the fee by 50% or more, the court may award reasonable attorney fees and costs. In addition, the court will be required to award damages of \$500 dollars if it finds that a public body arbitrarily and capriciously violated the Act by charging an unreasonable fee. The court may also award punitive damages of \$500 dollars.

If a court finds the public body intentionally failed to comply with the Act or acted in bad faith, the court must charge the public body a civil fine not less than \$2500 or more than \$7500 dollars.

Effective date of July 1, 2015

This policy replaces the previous Board approved policy dated May 17, 2004.

Board Approved: April 20, 2015

MCL 15.234, 15.234, 15.235, 15.240, and 15.241 sec. 4, 5, 10a.