

SWMBH Operating Policy 10.12

Subject: Freedom of Information Request		Accountability: Compliance	Effective Date: 2/24/2014	Pages: 7
REQUIRED BY: BBA Section _____ PIHP Contract Section _____ NCQA/URAC Standard _____ Other _____			Last Reviewed Date: 10/4/18	Past Reviewed Dates: 5/13/16 6/14/16 5/17/18
LINE OF BUSINESS: <input checked="" type="checkbox"/> Specialty Waiver (B/C) <input checked="" type="checkbox"/> 1115 Waiver <input checked="" type="checkbox"/> Healthy Michigan <input checked="" type="checkbox"/> SUD Medicaid <input checked="" type="checkbox"/> SUD Block Grant <input checked="" type="checkbox"/> MI Health Link <input type="checkbox"/> OTHER: _____	APPLICATION: <input checked="" type="checkbox"/> SWMBH Staff and Ops <input type="checkbox"/> Participant CMHSPs <input type="checkbox"/> SUD Providers <input type="checkbox"/> MH / DD providers <input type="checkbox"/> Other: _____	Last Revised Date: 10/4/18	Past Revised Dates: 5/13/16 6/14/16	
Approved: <u>Mila C. Todd</u> Date: <u>10-11-18</u>			Required Reviewer: Chief Compliance & Privacy Officer	

I. Purpose

Assure compliance with the Freedom of Information Act ("FOIA" or the "Act").

Formulate a comprehensive policy regarding the dissemination of information pursuant to the Freedom of Information Act (MCL.15.231 *et seq.*, Public Act 442 of 1976, as amended).

Communicate to Southwest Michigan Behavioral Health ("SWMBH") officials, employees, and the public the formal Policy on FOIA requests.

II. Policy

A. General Information

1. All FOIA requests shall be forwarded to the FOIA Coordinator for proper processing.
2. All documents in the possession of SWMBH are public records subject to the FOIA for which a disclosure determination is made by the FOIA Coordinator. This shall include documents in the possession of SWMBH that are created by another agency (i.e., Michigan Department of Community Health, CMS, etc.). However, documents which are possessed **only** by another agency or entity under contract with SWMBH do not constitute the public records of SWMBH.
3. The FOIA requires disclosure of the fact that a requested document does not exist. A plaintiff in a FOIA action that is forced to file a lawsuit to ascertain that a document does not exist is a prevailing party entitled to an award of costs and reasonable attorney fees.
4. SWMBH must, as part of its response to a FOIA request, provide a detailed itemization that clearly lists and explains all allowable charges for each of the components listed below under the section herein titled, "SWMBH Freedom of Information Act Processing Costs and Fee Form," that compose the total fee used for estimating or charging purposes.

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5. FOIA requests may be submitted in person or via mail, facsimile machine or electronic mail. Any written request for a document shall be considered a FOIA request regardless of whether the FOIA is mentioned.
6. Written requests may be submitted to SWMBH's FOIA Coordinator at the following address: FOIA Coordinator, 5250 Lovers Lane, Suite 200, Portage, MI, 49002.
7. In the event a written FOIA request is received by a SWMBH employee other than the FOIA Coordinator, a copy of this should be provided to the FOIA Coordinator the same day it is received. All written requests for production of records shall be processed by the FOIA Coordinator.
8. All FOIA requests shall be presented in writing. FOIA, however, also provides that if SWMBH receives a verbal request for information that it believes is available on its website that SWMBH must, where practicable and to the best of the public employee's knowledge, inform the requestor about SWMBH's pertinent website address. The FOIA Coordinator must be notified of any such request.
9. A written request that is sent by e-mail and delivered to SWMBH's spam or junk mail folder is not received until one day after SWMBH first becomes aware of the written request. SWMBH must note in its records both the time the written request is delivered to the spam or junk mail folder and the time SWMBH first becomes aware of the request.

III. Standards and Guidelines

A. The SWMBH FOIA Coordinator

1. Pursuant to Section 6 of the FOIA, the FOIA Coordinator for SWMBH shall be Bradley Casemore, Executive Officer (EO).
2. The FOIA Coordinator shall be responsible for accepting and processing requests for the SWMBH's public records under the FOIA and shall be responsible for approving a denial.
3. The FOIA Coordinator or designee shall also be responsible for the following activities:
 - a. Maintain monthly statistics on the number of FOIA requests processed.
 - b. Maintain a copy of all FOIA requests received and all completed Freedom of Information Act Response forms.
 - c. These documents shall be retained in accordance with SWMBH retention schedule, but for no less than one year, in accordance with MCL 15.233.
 - d. Logging FOIA requests as required in this policy.
 - e. Determining whether requested records/information exist.
 - f. Determining whether part or all of requested records is exempt, and separating exempt from nonexempt records.
 - g. Reviewing records to be collected to determine estimated costs, if applicable to be charged, or waived due to indigency.
 - h. Preparing necessary fee estimates based on SWMBH's applicable fee schedule and forwarding the estimates to the requester.
4. The FOIA logs should record (as a minimum) the following items:
 - a. Date Received;
 - b. Brief Description of Request;
 - c. Requesting Party;
 - d. Date Responded;
 - e. Extension Dates, if any;
 - f. Response Type (granted, denied, partial, extension, deposit);
 - g. Fees Charged; and
 - h. Fees Collected.

B. Processing Verbal Requests

1. Although requests for information under the FOIA must be in writing, FOIA also requires a public body to respond to a verbal request for information if the public employee to which the verbal request is made believes that the requested material is available on its website where practicable and to the best of the public employee's knowledge.
2. If a SWMBH employee receives such a request, the employee shall: (1) request that the requester fully identify themselves by full name; and (2) if the request is made to an employee other than the FOIA Coordinator, the request and response shall be noted by the employee and sent to the FOIA Coordinator. If the SWMBH employee does not believe that the requested material is available on SWMBH's website, then the employee should direct the requestor to make his or her request in writing.

C. Processing Written FOIA Requests:

1. A FOIA request received by an employee shall be immediately forwarded by fax transmittal, electronic mail, or hand delivery to the FOIA Coordinator or designee. The FOIA Coordinator or designee shall respond to the request within five (5) business days after SWMBH receipt, using the Freedom of Information Act Response form. A request received by facsimile, electronic mail, or other electronic transmission shall be considered received on the business day following the date of transmission. If additional explanation of the basis of FOIA or other statute for non-disclosure is needed, an attachment may accompany the response form.
2. The FOIA Coordinator must, within the 5 day period, respond to a request with one of the following responses:
 - a. **Grant the Request.** A copy of the request for a public record along with all of the requested documents shall be sent to the person who requested the records on a response for public records form.
 - b. **Deny the Request.** The FOIA Coordinator shall sign and state 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 SWMBH Board or a judicial review of the decision as provided under FOIA. Failure to timely respond to the request constitutes 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 (if a record is exempt, SWMBH should provide the specific statutory citation for the exemption that applies to the specific request).
 - c. **Grant the request and issue a written notice to the requesting person denying such a request in part.** Material which is partially exempt and partially subject to disclosure shall be separated or deleted and the non-exempt material offered for inspection. A general description of the separated or deleted information shall be provided to the requesting person.
 - d. **Request an Extension.** SWMBH may extend the response period by an additional 10 business days with a notice that specifies the reason(s) for the extension and date by which the public body does one of the above. A public body cannot issue more than one notice of extension for a particular request.
3. The FOIA Coordinator or designee shall review the request and determine whether the SWMBH possesses non-exempt records responsive to the request. SWMBH shall provide existing, non-exempt public records under the name given by the requestor or by another name reasonably known to SWMBH.
4. The FOIA Coordinator or designee shall be responsible for obtaining the requested documents that are in the possession of SWMBH. If SWMBH does not have the document

requested, the FOIA Coordinator is not required to obtain it from outside SWMBH, including from another agency or entity under contract with SWMBH, in order to comply with the request.

5. The FOIA Coordinator or designee shall carefully review the documents obtained to ensure information and documents exempt from disclosure are not provided. If more than one exemption applies to a particular request, all relevant exemptions shall be indicated on the form when responding to a FOIA request. An explanation as to what was exempted shall be stated on the form.
6. If only a portion of a document is exempt, the exempt portion shall be deleted and the non-exempt portion of the document shall be disclosed. The FOIA Coordinator or designee shall ensure that the exempt portions of a document are not legible on the copy provided.
7. The 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. SWMBH will provide the responsive records and/or information, if any, on the requested media so long as it has the technological capability necessary to provide records on the particular non-paper physical media stipulated in the particular instance.

D. Inspection of Records

1. MCL 15.233 provides that: "A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."
2. Any person or persons making a request (by letter, facsimile, or electronic mail), via the FOIA, to inspect SWMBH records must make an appointment with the FOIA Coordinator (or assignee) during SWMBH's regular business hours. After the issuance of written notice in response to a request to inspect records, appointments should usually occur no less than ten business days after the appointment request to allow SWMBH to make appropriate arrangements to:
 - a. Find and gather the requested information, if available;
 - b. Provide reasonable, secure facilities for inspection and examination;
 - c. Provide adequate protection of original public records; and
 - d. Coordinate regular functions while the inspection occurs.
3. Fees may be charged as explained in the "Freedom of Information Act Processing Costs and Fee Form" section herein.
4. A staff member must be present at all time during the inspection of SWMBH records if any original records are involved. Requesters are allowed to review/identify the records desired to be copied by placing a yellow "post-it" sticker or paper clip on each page. (Note: Wait until all pages are identified prior to making any copies; and dependent upon the number of copies to be made, advise the requester that the copies may have to be mailed the next business day.)
5. In order that records/documents remain together as filed, do not allow the requester to un-staple/un-clip records without supervision. The requester is not allowed to remove documents from files or from the premises unless those documents are copied specifically for the requester by the FOIA Coordinator or SWMBH's legal counsel.

E. Exemptions Under FOIA

1. The exemptions allowed by the FOIA are expressed in general language, which must be applied to the specific document requested. It is impossible to list all exempt information or documents herein, therefore the FOIA Coordinator must be familiar with all the exemptions. The following are some of the exemptions which are most frequently used and examples (i.e.,) of the items to which the exemptions may apply.

- a. Clearly unwarranted invasion of an individual's privacy – Exemption 13(1) (a) (i.e., home addresses and home telephone numbers, personal cellular phone numbers).
- b. Information which is preliminary to a final agency decision, unless it is purely factual and the public interest warrants disclosure – Exemption 13(1) (m) (i.e., interview notes, harassment and sexual harassment investigations prior to completion).
 - i. **Note:** Portions of all of an investigation may be exempt after completion for other reasons (i.e., privacy or security concerns).
- c. The FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute – Exemption 13(1) (d) (i.e., documents and/or information protected under the Mental Health Code).
- d. Any documents or information determined to be confidential by a hearing officer at a hearing conducted pursuant to Administrative Rule 791.3315.
- e. The home addresses, home telephone numbers and other information contained within the personnel files of a SWMBH employee, unless the requestor is the employee. However, the employee's name, age (not date of birth), past and present positions with the SWMBH and length of service in a position shall be provided to any requestor. For purposes of the exemption, personnel files include medical and expunging files maintained on an employee.
- f. Information which is subject to a specific privilege (i.e., attorney/client, doctor/patient, psychologist/patient), except if the requestor has a signed release from the client/patient that is HIPAA compliant – Exception 13(1) (g) & (h).
- g. Information or records that would disclose the social security number of any individual – Exception (13) (1) (w).
- h. Information or records relating to a civil court action in which the requesting party and SWMBH are parties – Exception (13) (1) (v).

F. Recordkeeping and Record Retention

1. The FOIA logs should record (as a minimum) the following items:

- a. Date Received;
 - i. **Note:** A written request that is sent by e-mail and delivered to SWMBH's spam or junk mail folder is not received until one day after SWMBH first becomes aware of the written request. SWMBH must note in its records both the time the written request is delivered to the spam or junk mail folder and the time the public body first becomes aware of the request.
- b. Brief Description of Request;
- c. Requesting Party;
- d. Date Responded;
- e. Extension Dates, if any;
- f. Response Type (granted, denied, partial, extension, deposit);
- g. Fees Charged; and
- h. Fees Collected
 - i. **Note:** A public record search must be furnished without charge for the first \$20.00 of the fee for each request for individuals who are indigent and receiving specific public assistance (or state facts showing inability to pay

because of indigency). An individual is ineligible for a fee reduction, however, if that individual has previously received discounted copies of public records from the same public body twice during that calendar year. Thus, it may be prudent to also maintain records on fee reductions.

2. SWMBH shall comply with the FOIA related record retention responsibilities in accordance with MCL 15.233(2).

IV. Definitions

- A. **Fees:** Agency charges related to a FOIA request for a public record search, segregating exempt and non-exempt material, the necessary copying of a public record for inspection or for a copy of a public record and other permitted costs under the FOIA. Fees shall be limited as provided under the FOIA.
- B. **FOIA Coordinator:** The person(s) designated by SWMBH with the primary responsibility to accept and process requests for public records.
- C. **Person:** An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. "Person" does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.
- D. **FOIA Request:** A written request submitted to SWMBH that describes a record sufficiently.
- E. **Public Record:** A writing prepared, owned, used, in the possession of or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. The FOIA separates public records into the following 2 classes:
 1. Those that are exempt from disclosure under Section 13.
 2. All public records that are not exempt from disclosure under Section 13 and which are subject to disclosure under the FOIA.
- F. **Requestor:** The person (see definition of person) making the request for documents under the FOIA.
- G. **Writing:** Handwriting, typewriting, printing, photo stating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

V. References

The Michigan Freedom of Information Act (FOIA) requires that public bodies grant access to information regarding the affairs of their operations as required under the Act. The Act provides for public access to certain records; permits certain fees; prescribes the powers and duties of certain public officers; and provides remedies, penalties and repeals to certain acts and parts of acts.

The FOIA is designed to implement a strong state policy that all records maintained by government, unless exempted, are to be made available to the public upon request.

As a public body, Southwest Michigan Behavioral Health (SWMBH) is required to assure that persons are entitled to full and complete information to persons requesting the public records, unless those records are exempt from public disclosure by the FOIA or some other statute.

VI. Attachments

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- A. SWMBH 10.12A FOIA Processing Costs and Fee Form & FOIA Notice of Right to Appeal
- B. SWMBH 10.12B Statement of Fees for FOIA Request
- C. SWMBH 10.12C FOIA Public Summary of Procedures and Guidelines
- D. SWMBH 10.12D FOIA Response Form