



HURON BEHAVIORAL HEALTH
PROCEDURE

Procedure #: **ORI.2.11**
Issue Date: **06/07/16**
Rev. Date: **05/28/19**
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Title: Freedom Of Information Act Procedure
Prepared By: Executive Director

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Purpose:

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, this procedure defines the process for responding to FOIA requests at Huron Behavioral Health (HBH). HBH has posted this procedure on the HBH website so that the public is informed and can fully participate in the FOIA democratic process.

Scope:

This procedure applies to all employees assigned the responsibility of responding to a FOIA request at HBH.

Information:

1. Consistent with the Michigan Freedom of Information Act, it is the policy of Huron Behavioral Health that all persons (except those incarcerated in a state of local correctional facility), 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 public employees.
2. It is HBH's policy with respect to FOIA request to comply with State law in all respects, and to respond to FOIA requests in a consistent, fair, and timely manner regardless of who makes such a request.
3. HBH acknowledges its legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. HBH also acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure effective operation of government and/or to protect the privacy of individuals. When a document or specific information is requested, and that document does not exist at HBH, HBH is not required to create such document.
4. HBH will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records.
5. HBH has established written procedures and guidelines regarding FOIA requests from the general public, as defined below, regarding how to submit written requests to HBH, including responses, fee calculations, and an avenue for challenges and appeals. A written public summary of this process is available upon request.
6. In accordance with the State of Michigan's "Records Management Manual for Local Governments", HBH staff shall not destroy any records, even if those records are authorized for destruction under the Retention and Disposal Schedule (General Schedule #20):
 - If a FOIA request has been received for those records;
 - If they believe than an investigation or litigation is imminent; or
 - If they are notified that an investigation or litigation has commenced.

Procedure:

1. Pursuant to the authority of PA 442 15.236 (section 6), HBH has designated the Human Resource (HR) Manager/Board Clerk, as the FOIA Coordinator who is responsible for accepting and processing FOIA requests submitted to HBH. The FOIA Coordinator is authorized to designate other HBH staff, as necessary, to assist with FOIA activities when written requests for HBH's public records are received.
2. There is no specific form needed to make a FOIA request, however the request must be made in writing to HBH. The requestor can request to receive the records in a specific format (i.e. printed or electronic copies). If a request for a public record is received by fax 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 HBH's spam or junk-mail folder, the request is not deemed received until one (1) business day after the date that the FOIA Coordinator became aware of the request.

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3. When the HBH FOIA Coordinator becomes aware of the request, he/she will record on the "[FOIA Log Sheet Form](#)" (90-613) 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.
4. The Information Systems (IS) Manager shall review HBH's spam and junk-mail folders on a regular basis, (at least once per month) and forward any e-mails labeled FOIA to the FOIA Coordinator.
5. The FOIA Coordinator will retain a copy of all written requests for public records received by HBH.
6. Unless otherwise agreed to in writing by the person making the request, HBH will issue a response within five (5) business days of receipt of a FOIA request. HBH will respond to a request in one of the following ways:
 - a. Grant the request
 - b. provide notice to the requestor that the requested information is available on the HBH website (including providing guidance to the website information and the web address @ huroncmh.org
 - c. Issue a written notice denying the request:
 - Written notice of the denial will be provided to the requester within five (5) business days, or within fifteen (15) business days if an extension is taken
 - Denial notice shall include:
 - Full explanation of the reason(s) for the denial
 - The requester's right to submit a written appeal to the Chief Executive Officer (CEO)
 - The requester's right to seek judicial review
 - Notification of the right of judicial review will include notification of the right to receive attorney fees and collect damages
 - Signature and designation of person responsible for the denial of the request
 - d. Grant the request in part and issue a written notice denying the request in part
 - e. Issue a notice indicating that due to the nature of the request, HBH needs an additional ten (10) business days to respond for a total of no more than fifteen (15) business days. Only one such extension is permitted.
7. If a request is granted, or granted in part, the FOIA Coordinator may require that payment up to 50% of the estimated cost be paid for the allowable fees associated with responding to the request prior to beginning the FOIA activity and providing the requested records. Rates will be charged in accordance with the current allowable rules for material and labor costs for the searching and preparation of the requested documents and calculated using the lowest paid person in the organization that is capable of performing the necessary duties. HBH cannot charge for labor to redact.
8. If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial, 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 described timelines above.
9. HBH shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator shall make records accessible in a manner that protects HBH documents from loss, alteration, mutilation or destruction, and to prevent excessive interference with normal HBH operations.
10. Appeal: If a 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 of the person's right to submit an appeal of the denial to either the HBH CEO, or seek judicial review in the 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;
11. The Notice of Denial shall be signed by the FOIA Coordinator.

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Definitions/Acronyms:

Acronyms:

CEO - Chief Executive Officer
CMHSP - Community Mental Health Service Program
EMR – Electronic Medical Record
EPI- Electronic Protected Health Information
FOIA – Freedom Of Information Act
HBH – Huron Behavioral Health
HIPAA – Health Insurance Portability and Accountability Act
MDHHS – Michigan Department of Health and Human Services
PHI- Protected Health Information

Definitions:

Public Record – refers to a record required by law to be made and kept. Public Record: means 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. The law further goes on to include in this definition any form of media in which the data is recorded which includes all handwritten and typed documents as well as images, video and audio records in their many forms. The 2001 Legislature expanded the definition of a public record to include electronic mail, or e-mail, "sent or received in connection with the transaction of official business." In accordance with PA 442 15.243, some records are exempt and are generally NOT open to the public include:

- Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy
- Those documents properly classified as secret in the interest of national defense or foreign policy;
- Related solely to internal personnel rules and practices;
- Specifically exempted by other statutes;
- A trade secret or privileged or confidential commercial or financial information obtained from a person;
- A privileged inter-agency or intra-agency memorandum or letter;
- A personnel, medical, or similar file the release of which would constitute a clearly unwarranted invasion of personal privacy;
- Compiled for law enforcement purposes, the release of which would:
 - a. be expected to interfere with law enforcement proceedings
 - b. deprive a person of a right to a fair trial or an impartial adjudication
 - c. constitute an unwarranted invasion of personal privacy
 - d. disclose the identity of a confidential source
 - e. disclose law enforcement investigative techniques or procedures
 - f. endanger an individual's life or physical safety
- Contained in or related to examination, operating, or condition reports about financial institutions that the SEC regulates or supervises; or
- And those documents containing exempt information about gas or oil wells.
- For a complete listing of all allowable exemptions, go to:
[http://www.legislature.mi.gov/\(S\(waems3ncu1i343wpv0kwyij\)\)/documents/mcl/pdf/mcl-act-442-of-1976.pdf](http://www.legislature.mi.gov/(S(waems3ncu1i343wpv0kwyij))/documents/mcl/pdf/mcl-act-442-of-1976.pdf)

Forms:

[90-609 Written Summary of FOIA Process](#)

FOIA Appeals Letter

Acknowledgement of FOIA Request Letter

[90-613 FOIA Request Log](#) Sheet

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Notice to Extend Response Time Form
 Notice of Denial Form
 Appeal of Denial of Records Form

Records:

Records of FOIA requests are retained by the FOIA Coordinator for a minimum retention of the year of creation plus one (1) year in accordance with the Michigan Department of Health and Human Services (MDHHS) General Schedule #20.

Reference(s) and/or Legal Authority

Freedom Of Information Act (Act 442 of 1976) @ [http://www.legislature.mi.gov/\(S\(nllruc5rra2ixkzcrbrqnu\)\)/mileq.aspx?page=GetObject&objectname=mcl-act-442-of-1976](http://www.legislature.mi.gov/(S(nllruc5rra2ixkzcrbrqnu))/mileq.aspx?page=GetObject&objectname=mcl-act-442-of-1976)
 General Schedule #20 for CMHSPs @ http://www.michigan.gov/documents/hal/mhc_rm_gs20_195724_7.pdf
[ORI.1.12 HBH Compliance Program Policy](#)
 MSHN Policy "General Management – Freedom Of Information Act (FOIA) Request Policy"
 State of Michigan "Records Management Manual for Local Governments" @ https://www.michigan.gov/documents/hal_mhc_rms_Local_RM_Manual_116243_7.pdf

Change History:

| Change Letter | Date of Change(s) | Changes |
|---------------|-------------------|--|
| None | 06/07/16 | None – new document created to define the FOIA Request process. |
| A | 03/13/18 | In "Procedure" section #2 added first two sentences, moved first three bullets in #10 to bullets in 6.c, made several minor wording/grammatical changes/corrections throughout document without changing sentence content. |
| B | 07/09/18 | In "Information" section added #6, in "References" section added "State of Michigan "Records Management Manual for Local Governments". |
| C | 05/28/19 | In "Purpose" section added second sentence, in "Procedure" section #1 first sentence added "who is responsible....", in #7 added "HBH cannot charge for labor to redact.", in "Definitions" section reordered several bullets and added 1 st bullet and last bullet, in "References" section added MSHN Policy, made numerous additional wording/grammatical changes/corrections throughout the document without changing sentence content. |
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