

I. REQUEST FOR PUBLIC RECORDS

A. How to Submit Written Requests

A written request to inspect, copy, or review a public record should be submitted to the District's FOIA Coordinator.

*FOIA requests can be sent via U.S. Mail to:

FOIA Coordinator
Bryan McKenna, Superintendent
308 Meguzee Point Rd
Elk Rapids, MI 49629

*FOIA requests sent via email should be sent to: bmckenna@erschools.com

*FOIA requests sent via fax should be faxed to: 231-264-6538.

A request must describe the public record in sufficient detail to enable the District to find the requested record.

A person may subscribe to future issuances of public records created, issued, or disseminated by the District on a regular basis, such as notices of school board meetings. A subscription is valid for up to six months and may be renewed by the subscriber.

In lieu of paper copies, the requestor may stipulate that the District provide non-exempt public records or non-paper physical media, electronically mailed, or otherwise electronically provided. The District is not required to produce non-exempt public records or non-paper physical media if the District lacks the technological capability necessary to provide the requested records on the particular non-paper physical media stipulated in the particular instance. The District is not required to use non-paper physical media provided by the requestor and, to safeguard the District's information technology infrastructure, shall not do so.

A person may request a certified copy of a public record.

B. Explanation of Written Responses

The District will respond to a written request under the FOIA within five business days (excluding weekends and legal holidays) after the District receives the written request, unless otherwise agreed to in writing by the requestor. The FOIA defines the date of receipt by the District differently depending upon how the request was delivered to the District (e.g., hand-delivery, regular mail, email, facsimile).

The District will respond to a request by doing one of the following: (a) granting the request; (b) issuing a written notice denying the request; (c) granting the request in part and issuing a written notice denying the request in part; or (d) issuing a notice extending for not more than 10 business days the period during which the District will respond to the request. The District shall not issue more than 1 notice of extension for a particular request.

If a requestor asks for information that is available on the District's website, the District will notify the requestor in its response where the records may be found on its website. Paper copies of public records available on the District's website will be made available upon request, but a fee may be charged as explained in Section II and on the detailed fee itemization form.

The District will provide reasonable facilities for a requestor to inspect non-exempt public records. The facilities will be available during the District's normal business hours. The FOIA Coordinator will establish rules regulating the manner in which records may be inspected to protect the District's records from loss, alteration, mutilation, or destruction, or to prevent undue interference with the District's normal operations.

If a request is denied in whole or in part, the District will include in the written notice of denial an explanation of the basis for the denial and, if applicable, a certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the District. If a public record or information is separated and exempt from disclosure (redacted), the District will describe generally the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

C. Deposit Requirements

Where the District estimates that the fee authorized under the FOIA and these for responding to a request will exceed Fifty Dollars (\$50.00), the District may require a good-faith deposit from the requestor before providing the requested records. A good-faith deposit shall not exceed one-half (1/2) of the total estimated fee and shall include a detailed itemization of estimated fee amounts. The FOIA Coordinator will provide the requestor with a detailed itemization of the allowable fees estimated to be incurred by the District to process the request. The District will include with its request for good-faith deposit a best efforts estimate of the time frame within which the District will provide the requested public records. The timeframe estimate is not binding on the District but will be made in good faith and the District will strive to be reasonably accurate.

If a requestor previously requested public records from the District, and if the District made the requested public records available on a timely basis but was not paid in full the total estimated fee for that previous request, the District may, to the extent permitted by the FOIA, require a deposit of up to 100% of the estimated fee for the subsequent request(s).

D. Fee Calculation

The FOIA permits the District to charge six fee components: (a) labor costs of searching for, locating, and examining public records; (b) labor costs of separating or deleting (redacting) exempt information from non-exempt information; (c) labor costs to duplicate or publish requested public records; (d) actual costs of paper copies (not to exceed 10 cents per sheet for standard 8-1/2 by 11 or 8-1/2 by 14 sheets of paper); (e) actual costs of non-paper physical media (e.g., flash drive, CD) if requested and if the District has the technological capability to comply; and (f) actual costs of postal delivery. The FOIA Coordinator will require that payment be made in full for the allowable fees before the requested records are made available.

1. **Fee Waivers.** A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the District determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public records can be considered as primarily benefiting the general public.
2. **Discounts.** Under the following circumstances, a public record search shall be made by the District and a copy of a non-exempt public record shall be furnished without charge for the first \$20.00 of the fee:
 1. If an individual who is entitled to information under the FOIA:
 - submits an affidavit stating that the individual is receiving specific public assistance or is unable to pay the fee because of indigence and stating that the individual is not making the request in conjunction with outside parties in exchange for payment or other remuneration;
 - and that individual has not previously received discounted copies of public records from the District twice during the same calendar year.
 2. If a nonprofit corporation formally designated by the State of Michigan to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, submits a request that meets all of the following requirements:
 - is made directly on behalf of the organization or its clients;
 - is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and
 - is accompanied by documentation of its designation by the state, if requested by the District.

E. Avenues for Challenge and Appeal

1. **Challenge to Record Denial.** If the District fails to respond to a FOIA request or makes a final determination to deny all or a portion of a request, the requesting person may submit an appeal to the District's Board of Education or may commence an action in the circuit court for the county in which the public record or one of District's offices is located.
2. **Challenge to Fee.** If the District requires a fee that requestor believes exceeds the amount permitted under the FOIA or the District's publicly available procedures and guidelines, the requesting person may commence an action in the circuit court for the county in which the public record or one of District's offices is located.

II. Procedures and Guidelines

A. Requests

1. All “persons,” except those persons incarcerated in state or local correctional facilities, are entitled to submit a FOIA request to the District. A “person” is defined for purposes of the FOIA to mean “an individual, corporation, limited liability company, partnership, firm, or organization, association, governmental entity, or other legal entity.”
2. A FOIA request is a written request to inspect, copy, or receive copies of a public record. A request must describe the public record in sufficient detail to enable the District to find the requested record.
3. FOIA requests must be in writing. If, however, a person makes an oral request for information that is available on the District’s website, and if the employee to whom the request is directed knows that the information is available on the District’s website, that employee must inform the requesting person that the information is available on the District’s website.
4. The District’s FOIA Coordinator is responsible to process requests to inspect, copy, or receive copies of public records. FOIA requests should be sent to the District’s FOIA Coordinator.
 - FOIA requests can be sent via U.S. Mail to:
FOIA Coordinator
Bryan McKenna, Superintendent
308 Meguzee Point Rd, Elk Rapids, MI 49629
 - FOIA requests sent via email should be sent to: bmckenna@erschools.com
 - FOIA requests sent via fax should be faxed to: 231-264-6538
5. If an employee of the District receives a written request to inspect, copy, or receive copies of a public record, the employee should promptly forward the request to the District’s FOIA Coordinator. A requestor is not required to use the District’s sample Request Form, or to include the word “FOIA” in the request. Therefore, all written requests to inspect, copy, or receive copies of records should be promptly forwarded to the FOIA Coordinator for review.
6. The FOIA Coordinator shall keep a copy of all written requests for public records received by the District on file for a period of at least one year.
7. A person may subscribe to future issuances of public records created, issued or disseminated on a regular basis, such as notices or agendas of school board meetings. In all other respects, if the requested public record does not exist as of the date requested, the District has no obligation under the FOIA to create the requested record or to provide a copy if created at a later date. A subscription is valid for up to 6 months and may be renewed by the subscriber.

8. The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record to the requestor.

B. Responses

1. Unless otherwise agreed to in writing by the person making the request, the District must respond to a written request under the FOIA within 5 business days (excluding weekends and legal holidays) after the District receives the request by doing one of the following:
 - Granting the request;
 - Sending written notice denying the request;
 - Granting the request in part and issuing a written notice denying the request in part; or
 - Issuing a notice extending for not more than 10 business days the period during which the District will respond to the request. The District shall not issue more than one notice of extension for a particular request.
2. If a request is denied in whole or in part, the District must include in the written notice of denial an explanation of the basis for the denial and, if applicable, a certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the District.
 - Exemptions to disclosure are set forth in Section 13 of the FOIA, MCL 15.243, which is available on the Michigan Legislature's website at www.legislature.mi.gov.
 - If a public record or information is separated and exempt from disclosure (redacted), the District will describe generally the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.
3. The trigger date for responding to a FOIA request depends upon the manner in which the request was delivered. A request sent by mail or delivered by hand is received for purposes of the FOIA on the day it arrives at the District. A request sent by email, fax, or other electronic means is received for purposes of the FOIA one business day after the date on which it was electronically transmitted. If a request is sent by email and is diverted to the District spam or junk mail folder, the request is not received until one day after the date it is discovered in the spam or junk mail folder. The FOIA Coordinator shall include in the District's records both the time that a written request was delivered to its spam or junk mail folder and the time that the District first became aware of that request. The District shall review the FOIA Coordinator's spam or junk mail folder at least once every 30 days.
4. If a request is fully granted, the District will provide copies of, or an opportunity to inspect, all the public records that were requested, upon payment of the appropriate fee (if any). No pages will be left out, and nothing will be redacted.

5. The District will provide reasonable facilities for a requestor to inspect non-exempt public records. The facilities will be available during the District's normal business hours. The FOIA Coordinator will establish rules regulating the manner in which records may be inspected to protect the District's records from loss, alteration, mutilation, or destruction, or to prevent undue interference with the District's normal operations.
6. The FOIA identifies numerous specific exemptions to disclosure. If a request includes information that is exempt from disclosure, the District will provide a written response and list the reason(s) why the record(s) or portions of records will not be disclosed.
7. If a request is partially denied, it means that some records or parts of records will be disclosed, but some records or parts of records will not be disclosed. The District will provide copies of, or an opportunity to inspect, the non-exempt records, but exempt information (which may consist of entire documents, pages, or information on a page) may be withheld or redacted. The District will include in the written notice of denial-in-part an explanation of the basis for the denial-in-part and, if applicable, a certificate that one or more of the public records does not exist under the name given by the requestor or by another name reasonably known to the District.
8. Failure of the District to respond to a FOIA request within the prescribed timelines constitutes denial of the request. The fee that the District is permitted to charge will be reduced by 5% per day, up to a 50% reduction, if the failure to timely respond was willful or intentional, or if the request included language described in the FOIA as readily conveying a FOIA request.
9. The FOIA does not require the District to create any records, or to make compilations, summaries, or reports of existing records. If a request seeks records that do not exist, the District will certify that no records responsive to the request exist under the name or description provided in the request or another name known to the District
10. If a request asks for information that is available on the District's website, the District will notify the requestor in its response where the records may be found. If a requestor seeks paper copies of information available on the website, the District may charge the fees noted below and on the detailed fee itemization form, except that there will be no charge for separating exempt from nonexempt material.
11. In lieu of paper copies, the requestor may stipulate that the District provide non-exempt public records on non-paper physical media, by electronic mail, or other electronic means. The District is not required to produce non-exempt public records on non-paper physical media if the District lacks the technological capability necessary to provide the requested records on the particular non-paper physical media stipulated in the particular instance. The District is not required to use non-paper physical media provided by the requestor and, to safeguard the District's information technology infrastructure, shall not do so.

C. Deposit Requirements

1. Where the District estimates that the fee authorized under the FOIA and these FOIA Procedures and Guidelines, for responding to a request will exceed \$50.00, the District may require a good-faith deposit from the requestor before providing the requested records. A good-faith deposit shall not exceed one-half (½) of the total estimated fee and shall include a detailed itemization of estimated fee amounts. The FOIA Coordinator shall provide the requestor with a detailed itemization of allowable fees estimated to be incurred by the District to process the request. The District shall include with its request for good-faith deposit a best efforts estimate of the time frame within which the District will provide the requested public records. The timeframe estimate is not binding on the District, but the estimate will be made in good faith and the District will strive to be reasonably accurate.
2. If a requestor previously requested public records from the District, and if the District made the requested public records available on a timely basis but was not paid in full the total estimated fee for that previous request, the District may, to the extent permitted by the FOIA, require a deposit of up to 100% of the estimated fee for the subsequent request(s).

D. Fees

1. A fee shall not be charged for the cost to search, examine, review, and delete / separate / redact exempt from non-exempt information unless failure to charge a fee would result in unreasonably high costs to the District. In determining whether such costs are “unreasonably high,” the District will consider, on a case-by-case basis, the estimated costs given the volume and complexity of the request relative to the usual or typical costs incurred by the District in responding to FOIA requests.
2. The District charges the following fees:
 - **Labor costs incurred for searching for, locating, and examining public records.** Labor costs are calculated in 15-minute increments (rounded down) and will not exceed the hourly rate of the lowest-paid employee capable of searching for, locating, and examining the public records. No overtime will be charged unless requested by the requestor, approved by the District, and included on the fee itemization form. The hourly rate of the lowest-paid employee capable of searching for, locating, and examining particular records may vary depending upon the nature of the records sought and the corresponding qualifications or authorizations required to search for, locate, or examine the requested record. All charges will be noted on the fee itemization form.
 - **Labor costs for separating and deleting exempt information from non-exempt information.** Labor costs are calculated in 15-minute increments (rounded down) and will not exceed the hourly rate of the lowest-paid employee capable of separating and deleting material that is exempt from disclosure from information that is non-exempt from disclosure. No overtime will be charged

unless requested by the requestor, approved by the District, and included on the fee itemization form. The hourly rate of the lowest-paid employee capable of separating and deleting exempt information from non-exempt information may vary depending upon the nature of the records sought and the corresponding qualifications or authorizations required to separate and redact exempt information from non-exempt information. If the District FOIA Coordinator determines on a case-by-case basis that no employee of the District is capable of separating and deleting exempt from nonexempt material, the District may engage a contracted services provider and charge labor costs. Such labor costs shall be calculated in 15-minute increments (rounded down) and the hourly rate shall not exceed 6 times the state minimum wage. All charges will be noted on the fee itemization form.

- **Costs for non-paper physical media.** A requestor may stipulate that records be produced on non-paper physical media (e.g., on a flash drive or CD). If the District has the technological capabilities to comply with the request for production on non-paper physical media, the District may charge the actual and most reasonably economical cost of the requested non-paper physical media and the cost of non-paper physical media shall be included on the fee itemization form.
 - **Actual cost of duplication for paper records.** The District will charge the actual cost of duplication (not to exceed 10 cents per sheet) for 8-1/2 by 11-inch sheets of paper or 8-1/2 by 14-inch sheets of paper. The actual cost of duplication will be charged for non-standard-sized sheets of paper and may exceed 10 cents per sheet. The District shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.
 - **Actual labor costs for duplication or publication.** The District's charges for duplication or publication will not exceed the hourly rate of the lowest-paid employee capable of duplicating or publishing the records. The hourly rate of the lowest-paid employee capable of duplicating or publishing records may vary depending on the nature of the records sought. Duplication or publication fees are calculated in 15 minute increments (rounded down). All charges will be noted on the fee itemization form.
 - **Postal delivery charges.** The District may charge the costs of the least expensive form of postal delivery. If a requestor asks for expedited mailing, and if the District agrees to provide expedited mailing, the actual costs of the expedited mailing may be charged and must be included on the fee itemization form.
 - **Fringe benefits.** The District may add to the labor charges described above the actual cost of the public employee's fringe benefits, up to 50% of the labor costs. Fringe benefits must be noted on the fee itemization form.
 - **Overtime wages.** No overtime will be charged unless requested by the requestor, approved by the District, and included on the fee itemization form.
3. Each of the fee components described above must be specifically listed on the fee itemization form. A completed copy of the fee itemization form will be included with the response to the request.

4. **Fee Reductions.** If the FOIA Coordinator does not respond to a written request within the timeframes required by the FOIA, the District will reduce the charges for labor costs otherwise permitted under the FOIA and these Procedure and Guidelines by 5% for each day the District exceeds the time permitted for a response to the request, up to a maximum 50% reduction, if either of the following applies:
 - The late response was willful and intentional.
 - The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for “freedom of information,” “information,” “FOIA,” “copy,” or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.
 - If a fee reduction is required, the District will fully note the fee reduction on the detailed itemization of fees.
5. **Payment.** The FOIA Coordinator will require that payment be made in full for the allowable fees before the requested records are made available.
6. **Fee Waivers.** A search for a public record may be conducted, or copies of public records may be furnished, without charge or at a reduced charge if the District determines, in its discretion, that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public records can be considered as primarily benefiting the general public.
7. **Discounts.** Under the following circumstances, a public record search shall be made by the District and a copy of a non-exempt public record shall be furnished without charge for the first \$20.00 of the fee:
 - If an individual who is entitled to information under the FOIA:
 - submits an affidavit stating that the individual is receiving specific public assistance or is unable to pay the fee because of indigence and stating that the individual is not making the request in conjunction with outside parties in exchange for payment or other remuneration; and
 - that individual has not previously received discounted copies of public records from the District twice during the same calendar year.
 - If a nonprofit corporation formally designated by the State of Michigan to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, submits a request that meets all of the following requirements:
 - Is made directly on behalf of the organization or its clients;
 - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and

- Is accompanied by documentation of its designation by the state, if requested by the District.

E. Appeals

A requestor may appeal any denial of records or any fee charged for public records.

Challenge to Record Denial. If the District denies a request for records, the requestor may either:

- Appeal to the District’s Board of Education; or
- Commence an action in the respective circuit court for Antrim or Grand Traverse county within 180 days of the denial.

If the requestor appeals to the Board of Education, the appeal must specifically state the word “appeal” and state the reason(s) that the denial should be reversed. The following rules apply to record denial appeals to the board of education:

- An appeal is not “received” until the first regularly scheduled board meeting after the appeal is submitted.
- Within 10 business days after receiving the appeal, the Board of Education will do one of the following:
 - Reverse the denial;
 - Issue written notice upholding the denial;
 - Reverse the denial in part and issue written notice upholding the denial, in part; or
 - Issue written notice extending the time for response by not more than 10 business days.
- If the Board of Education fails to respond in a timely manner to the written appeal, or upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requestor may seek judicial review by commencing a civil action in circuit court.

A requestor is not required to submit an appeal to the Board of Education before commencing a civil action in circuit court to challenge a disclosure denial. If a circuit court determines that the requested record is not exempt from disclosure, the court will order the District to cease withholding or to produce all or a portion of the public record determined to have been wrongfully withheld. If the court determines that a disclosure denial was arbitrary and capricious, willful and intentional, or made in bad faith, the court will order that the District pay a civil fine to the state and punitive damages to the requestor. If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced in the circuit court, the court shall also require that the District pay the requestor’s reasonable attorneys’ fees, costs, and disbursements. If the requestor or the District prevails in part, the court may, in its discretion, award the District all or an appropriate portion of reasonable attorneys’ fees, costs, and disbursements.

Challenge to Fee. If the District requires a fee (defined to include a deposit) that requestor believes exceeds the amount permitted under the FOIA or the publicly available Procedures and Guidelines, the requesting person may, within 45 days after receiving notice of the required fee,

commence an action in the circuit court for the county in which the public record or one of District's offices is located.

- If a court determines that the fee exceeds the amount permitted under the FOIA or these Procedures and Guidelines, the court will reduce the fee to the permissible amount (if any).
- If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, 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 District arbitrarily and capriciously violated FOIA by charging an excessive fee, or acted in bad faith, the court will order that the District pay a civil fine to the state and punitive damages to the requestor.

Questions:

Any questions about these written procedures and guidelines should be directed to the District's FOIA Coordinator:

- Bryan McKenna, Superintendent
308 Meguzee Point Rd Elk Rapids, MI 49629
bmckenna@erschools.com
- 231-264-8692
231-264-6538(fax)

Forms and Information Attached:

- Board Policy 8310
- Board Administrative Guideline 8310A
- Sample FOIA Request Form 8310 F1