

**NORTH KENT SEWER AUTHORITY
4775 COIT AVENUE NE, GRAND RAPIDS, MI 49525**

**FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES
(THE “PROCEDURES”)**

I. INTRODUCTION

The Michigan Freedom of Information Act, Public Act 442 of 1976 (“FOIA”), mandates disclosure of public records, and requires public bodies to adopt procedures for complying with the Act. To fulfill this mandate, the North Kent Sewer Authority has established these Procedures for handling FOIA requests.

II. FOIA COORDINATOR

The Board of Trustees of the NKSA designates the Director to serve as the FOIA Coordinator. In the absence of the Director, the Chair or Vice Chair of the Board shall assume the responsibilities of 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 NKSA.

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.
- B. How Requests May be Submitted. Requests may be submitted in person to the office of the NKSA during regular business hours. Requests may also be e-mailed to jschoolcraft@nkسا.us.
- C. Forwarding Requests. A FOIA request received by any employee of the NKSA or member of the Board or other official shall be provided to the FOIA Coordinator promptly after it is received.
- D. Processing Responsibility. All written requests for records pursuant to FOIA shall be processed by the FOIA Coordinator.
- E. Requests to Inspect or Receive Copies of Records. A request shall indicate whether the requester wants to inspect the requested records, or wants to receive copies of the requested records. If the request does not so indicate, it shall be considered a request to inspect records. Inspection of public records shall occur during the NKSA’s normal business hours, when the records can reasonably be made available, and shall be subject to the rules set forth in these Procedures.
- F. Identification of Records. Requests shall sufficiently describe the public record to enable the FOIA Coordinator to identify and locate the record. A FOIA request

form shall be made available at no charge from the NKSA, but a requester shall not be required to utilize that form.

G. 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 NKSA's "spam" or "junk" e-mail folder (or other similar virus-protection software), the request shall be deemed received one business day after the NKSA 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 NKSA becomes aware of the request in the folder.

H. Informal Request

1. The FOIA Coordinator or staff may provide limited, readily identifiable public records without a written request in the 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. Such documents which according to law are to be made available without the necessity of a FOIA request.
- b. A single set of meeting minutes for a meeting held within the prior 12 months which is requested by specific date.
- c. Similar public records which can be readily provided.

2. Staff has the discretion to require a formal FOIA request.

3. Oral requests 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.

4. Copying and postage charges apply to these informal requests.

I. Incarcerated Persons. A person who is serving a sentence in a county, state, or federal correctional facility for conviction of a crime is ineligible to make a FOIA request.

IV. PROCESSING FOIA REQUESTS

A. Record of FOIA Requests. The FOIA Coordinator shall maintain a log or file of all written requests received, showing the nature and date of the request, date and manner of final response to the FOIA request, and public records provided.

B. Time for Response. The FOIA Coordinator shall, no more than five business days after the request has been made, unless a different time limit has 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 notify them that the records are available for inspection, or make copies of them available for delivery to the requesting person (depending on the type of request), together with a NKSA fee calculation 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 NKSA 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.
4. Extension of Time. The NKSA may issue a notice extending for not more than 10 business days the period during which the NKSA shall respond to the request. Not more than one notice of extension may be issued for any particular request. The notice shall describe the reasons for the extension and the date by which the public body will respond to the request in one of the three ways described above. If the NKSA issues a notice of extension, the notice shall include an estimate as to when the NKSA expects to respond to the FOIA request.

C. General Requirements for FOIA Response. FOIA requests shall be fulfilled in one or more of the following ways, depending on the request:

1. If inspection of records is requested, or the desired method of delivery is not specified, the NKSA will 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. An NKSA official or staff member shall be present at all times during the inspection of NKSA records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the NKSA's cost of this monitoring service, a fee shall be paid to the NKSA 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 NKSA files only by authorized NKSA 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 NKSA officials or personnel.
 - e. In some special situations in which inspection of records is requested, the FOIA Coordinator may determine, on a case-by-case basis, that only a copy of the record may be inspected. 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.
 - f. A person requesting to inspect NKSA records must make an appointment with the FOIA Coordinator. Appointments will be scheduled during the NKSA'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 NKSA staff's duties and responsibilities.
- 2. Provide copies of records if so requested.
 - 3. On a request for records which are issued on a subscription basis, such as Board of Trustees of the NKSA 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.

- D. Creation of Documents. The FOIA does not require the NKSA to make a compilation, summary or report of the requested public records or other requested information, or create a new public document. However, in some circumstances it may be less expensive and more convenient to prepare a compilation or new record to provide the information requested, than to assemble numerous documents responsive to a request. In such situations, the FOIA Coordinator may suggest an alternative means of assembling the information and proposed costs. With consent of the requester, such record may be prepared and the FOIA request shall be considered withdrawn.

V. CALCULATION AND COLLECTION OF FEES AND COSTS

A. In General.

1. The NKSA shall charge the requesting person for a public record search 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 NKSA because of the nature of the request, and the NKSA 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 NKSA, unless the labor cost of such response is borne by the requesting person.
2. All requests shall be charged a fee for copying, including labor directly related to duplication and mailing costs.

B. Permitted Fees and Charges.

1. Cost of Duplication of Records. The NKSA 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 NKSA 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 NKSA 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 NKSA official or employee or, if necessary, outside legal counsel.

- a. For services performed by a NKSA official or employee, the NKSA will charge in accordance with Article V.C of these Procedures.
 - b. For services performed by outside legal counsel, as determined by the FOIA Coordinator on a case-by-case basis, the NKSA 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, as that rate may change from time to time. As of the date of adoption of these Procedures, that wage rate is \$8.90 per hour. If the rate increases, under state law, the rate charged under these Procedures shall automatically change without action by the Board of Trustees of the NKSA or amendment of these Procedures. In charging such time for outside legal counsel, the NKSA shall provide notice to the requesting person of the name of the contracted person or firm in the detailed itemization of costs required by the Act.
 - c. The charges for such services will be billed in increments of 15 minutes or more and all partial time increments will be rounded downward.
 - d. No charge will be made for the redaction of documents if the NKSA previously redacted the public record in question and the redacted version is still in the NKSA's possession.
 - e. The NKSA shall itemize both the hourly wage and the number of hours included in the costs charged.
4. Costs for Mailing of Records. The NKSA 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 NKSA 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.
5. 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, or such greater amount permitted by FOIA. The NKSA 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 NKSA for the NKSA's actual charges.

6. Copies of Specialty Documents/Formats. The NKSA 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 NKSA official or employee is required to deliver and/or pick up the public records and/or copies of public records, the labor hours (calculated as provided 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.
- C. Calculation of Labor Costs. The NKSA will charge the hourly wage of its lowest-paid employee capable of performing the tasks identified in V.B.(1), (2), or (3)(a), above, regardless of whether that person is available or who actually performs the labor. The NKSA 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 NKSA shall itemize both the hourly wage and the number of hours charged for these costs. The NKSA 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 multiplier used to account for the lowest-paid employee's fringe benefits shall be included in the detailed itemization of costs provided by the NKSA to the requesting person.
- D. Collection of Fees and Deposits.
1. 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.
 2. If fees are charged, the FOIA Coordinator, or his/her designee, shall compute the charges and complete the detailed itemization of the fees.
 3. If the fee is less than \$20, and the requestor has not previously defaulted in payment of fees, the FOIA Coordinator is authorized but not required to mail the records with an invoice for payment. Otherwise, copies of the records shall not be released until the fee has been received, unless the person making the request is entitled to a full fee waiver as provided in Article V of these Procedures.
 4. 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 NKSA beginning to fulfill the request for the records.

- a. The deposit cannot exceed one-half of the total anticipated fees.
 - b. An itemized estimate of charges shall be provided when a deposit is required.
 - c. The NKSA 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 NKSA 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 NKSA'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 NKSA 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 NKSA for the prior records requested; and
 - (5) the NKSA calculates a detailed itemization, as required under FOIA, that is the basis for the current written request's increased estimated fee deposit.
 - d. If a deposit is required, the time for response shall be suspended until the deposit is received.
 - e. The NKSA 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 NKSA; or
 - (2) The NKSA 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 NKSA.
5. 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.

6. In accordance with Section 4(5) of FOIA, if a requesting person requests NKSA records that are publicly available on the NKSA's website, the NKSA 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 NKSA shall provide copies of such records and will charge for copies only in accordance with Article V of these Procedures.
- E. Fee Waiver. The NKSA may waive all or a portion of the fees for the search and copying of records if the FOIA Coordinator 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 may 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. Records subject to the attorney-client privilege, unless specifically waived by the Board of Trustees of the NKSA.
- E. 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 Board, to the attention of the Chair.

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 Chair consistent with these Procedures and the Act, the 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 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 Board of Trustees of the NKSA 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 Board of Trustees of the NKSA 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 Board of Trustees of the NKSA. If the requesting person files a fee appeal with the Circuit Court, the NKSA 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 Board of Trustees of the NKSA 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 Chair, on behalf of the 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 Chair, on behalf of the 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 Board of Trustees of the NKSA must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Board of Trustees of the NKSA shall not issue more than one notice of extension for a particular written appeal.
- 4. In accordance with FOIA, the Board is not considered to have received a written fee appeal until the first regularly scheduled meeting of the Board following submission of the written appeal.
 - 5. In accordance with Section 4(13) of FOIA, a deposit required to be paid by the NKSA is considered a “fee.”
- C. Civil Action. An appeal from a determination by the FOIA Coordinator or from a decision of the Board may be taken to the Circuit Court.

IX. COORDINATION WITH FOIA.

The Freedom of Information Act shall supersede any contrary provision of these Procedures, and shall apply with respect to situations or questions which are not specifically covered by these Procedures.

X. AMENDMENTS TO PROCEDURES

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

XI. AVAILABILITY OF PROCEDURES; SUMMARY

A copy of these Procedures and a summary of these Procedures shall be available free of charge at the NKSA office and shall be posted on the NKSA’s website www.nksa.us, in accordance with the FOIA.

XII. EFFECTIVE DATE

This Freedom of Information Act Procedures and Guidelines became effective on February 2, 2017.