

Amendment to Washington Township FOIA Procedures and Guidelines Dated August 20, 2015

The Governor signed Public Act 523 of 2018 into law on December 28, 2018 with immediate effect. This Act amends FOIA in a way that significantly impacts how townships can process FOIA requests. First, anonymous FOIA requests (like “Emily’s”) are now prohibited. A valid FOIA request must now contain the requestor’s: (1) complete name; (2) address written in compliance with United State Postal Service Standards; and (3) telephone number or e-mail address. Corporate entities who request records under the FOIA must provide this information for a company’s agent. A request that does not contain this information may be denied as invalid.

PA 523 also amends the FOIA to allow townships to terminate FOIA requests when that request has been abandoned. As a reminder, townships can require a FOIA requestor to submit 50% of the costs to fulfill a FOIA request before processing that request when the estimated costs of fulfilling a request exceed \$50.00. MCL 15.234(8). Before PA 523, there was no limit on the time a requestor had to provide the requested deposit, theoretically requiring townships to respond to requests months or years after the initial request had been made. This burden was only increased by the lack of clarity surrounding township’s responsibility to retain the records subject to the FOIA request. To address this oversight, PA 523 amended FOIA to allow townships to consider a request “abandoned” if a good-faith deposit is not received within 48 days after the good-faith deposit is requested. If the good-faith deposit is not paid within that period, the requestor would then be obligated to file a new FOIA request to obtain the requested records. MCL 15.234(14). To take advantage of this amendment, however, the good-faith deposit request must specify that the request will be considered abandoned unless a deposit is received within 48 days from the date the letter is mailed.

These amendments allow Michigan townships to address both “Emily’s” request, and similar requests moving forward. Township’s still dealing with “Emily’s” request should provide Emily with an abandonment notice, informing her that a failure to pay the requested deposit within 48 days will result in her request being considered abandoned. MCL 15.234(14).

Amendment to Washington Township FOIA Procedures and Guidelines Dated August 20, 2015

Washington Township amends our existing FOIA procedures, guidelines, and public summary, as well as any "form" responses, to include language that addresses the abandonment of a request.

The following is an example of the type of language you could use to address Emily's FOIA request. Thus, you should consult with your township attorney before proceeding.

The Township previously responded to your Freedom of Information Act ("FOIA") request for certain 2016 election materials, including a request for a good faith deposit (see attached Township response). We have not received your good faith deposit. Unless the Township receives your good faith deposit within forty-eight (48) days from the date of this letter, the Township will consider your FOIA request abandoned under MCL 15.234(14).

The Township has no duty to fulfill an abandoned FOIA request. *Id.* The Township may destroy previously-requested public records following applicable state and federal retention schedules. Once an FOIA request is abandoned, a new FOIA request is required to obtain any previously-requested public records that have not been destroyed.

Motion by Howard Whaley and supported by Sally Stoll to adopt these FOIA amendments

Roll Call: H Whaley yea, Stoll yea, Cook yea, Crocker yea, K Whaley yea

Motion approved and Supervisor declared the amendments approved.

Dated February 21, 2019

Laura Crocker
Laura Crocker, Clerk

Donald D Cook
Donald D Cook, Supervisor