

MICHIGAN FREEDOM OF INFORMATION ACT (“FOIA”)

Francis Reh Academy Procedures and Guidelines

The Freedom of Information Act (Act 442 of the Public Acts of 1976) (regulates and sets requirements for the disclosure of Public Records by all Public Bodies in the state. These Procedures and Guidelines inform individuals of Francis Reh Academy’s guidelines for obtaining information under FOIA.

KEY DEFINITIONS.

The term “Court” means the applicable Circuit Court in the County where Francis Reh Academy maintains its primary location.

The term “FOIA Coordinator” means an individual designated by Francis Reh Academy in accordance with FOIA to accept and process requests for Public Records. For the purpose of these procedures and guidelines, the Board of Directors of Francis Reh Academy hereby designates the School Leader of Francis Reh Academy as FOIA Coordinator for Francis Reh Academy with the authority and responsibilities stated in FOIA. FOIA Coordinator shall be responsible to accept and process all Written Requests for Public Records and shall also be responsible for approving a denial under FOIA.

The term “Person” means 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 any correctional facility in the U.S.

The term “Public Body” means and includes state officers, employees, agencies, departments, divisions, bureaus boards, commissions, councils, school districts, and community colleges as well as any other body which is created by state or local authority or which is primarily funded by or through state or local authority. Public Body does not include private non-profit corporations.

The term “Public Record” means any Writing prepared, owned, used by or in the possession of or detained by Francis Reh Academy in the performance of an official function, from the time it is created. Public record does not include computer software. FOIA does not require Francis Reh Academy to create a compilation, summary, or report of information or to create a new Public Record. A Person’s correspondence requesting information under FOIA is itself considered a Public Record.

The term “Unusual Circumstances” means any one or combination of the following, but only to the extent necessary for the proper processing of a request:

- The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct Public Records pursuant to a single request.
- The need to collect the requested Public Records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the Written Request.

The term “Requesting Party” means the Person making a Written Request.

The term “Writing” means handwriting, typewriting, printing, 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.

The term “Written Request” means a Writing that asks for information, and includes a Writing transmitted by facsimile, electronic mail, or other electronic means.

COVERAGE.

FOIA establishes requirements for the disclosure of Public Records by all Public Bodies in the state. In general, all records, except those specifically cited as exceptions, are covered by FOIA. The Public Records covered include minutes of open meetings, officials’ voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other Writings which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered. It does not matter what form the record is in.

Upon receiving a Written Request for a Public Record pursuant to these procedures and guidelines, any Person has the right to inspect, copy, or receive copies of the requested Public Records, unless the requested Public Record is exempt from disclosure pursuant to FOIA. A Written Request must be in writing, and must sufficiently describe the Public Record to allow Francis Reh Academy to identify and locate the Public Record. A Person may also subscribe to Public Records issued or created by Francis Reh Academy on a regular basis, and such subscriptions may be valid up to six months. However, if a request pertains to materials referred to in the Open Meetings Act of 1976, the subscription is valid for one year. If a requested Public Record may be obtained on Francis Reh Academy’s website, FOIA Coordinator shall notify the Requesting Party in writing of such availability and provide the direct Internet address or link to obtain such Public Record. If, after receiving such written notification, the Requesting Party notifies Francis Reh Academy that he or she continues to want Francis Reh Academy to provide a copy of the available Public Record, in any format, Francis Reh Academy shall process such request and may impose additional labor costs as specified in the Fees section below. Upon request for public inspection, Francis Reh Academy will provide reasonable facilities so that requesting Persons may examine and take notes from Public Records. The facilities will be made available for use during Francis Reh Academy’s regular business hours. Francis Reh Academy is obligated to take appropriate steps to safeguard original Public Records while being reviewed. Francis Reh Academy may provide information without a Written Request. If the request is verbal, and the information is readily available on the website, FOIA Coordinator shall inform the Requesting Party where to find the information.

TIMELINES.

A Written Request made by facsimile, electronic mail, or other electronic transmission will not be deemed received until one (1) business day after the electronic transmission is made. If the Written Request is sent by email and is automatically delivered to a spam or junk-mail folder, the Written Request is not received until one (1) day after Francis Reh Academy discovers the Written Request. The time the emailed Written Request is delivered to the spam/junk-mail folder and the time Francis Reh Academy becomes aware of the Written Request will both be noted in its written response. When Francis Reh Academy receives a Written Request for a Public Record, FOIA Coordinator will provide a written response that includes a detailed itemization of the calculated fees and deposit costs for Francis Reh Academy to provide the documents. Francis Reh Academy will respond to FOIA requests within five (5) business days after the Written Request is deemed received, unless the five-day period is waived by the Requesting Party, by one of the following:

- Grant the Written Request.
- Issue a written notice to the Written Requestor denying the Written Request, including the reasons for the denial.
- Grant the Written Request in part, and issue a written notice to the Written Requestor denying the Written Request in part.
- Notify the Requesting Party in writing and extend the time for an additional ten (10) business days setting forth the reasons for the extension as well as a detailed itemization of the total estimated fee. Francis Reh Academy shall not issue more than one (1) notice of extension for a particular request.

Upon receipt by Francis Reh Academy of the total amount due, FOIA Coordinator will provide the requested documents. A failure to respond to a request constitutes a final decision to deny the Written Request which may, among other things, form the basis for a Court suit to force disclosure.

FEES.

FOIA allows for Francis Reh Academy to charge fees in connection with Written Requests made for Public Records, except as noted or as provided for otherwise in FOIA. A fee will be charged for a Public Record search, copying for inspection, or for providing a copy of a Public Record. Fees include the cost of search, examination, review, separation, and deletion of exempt from nonexempt information, mailing costs, and incremental cost of duplication or publication including labor, as provided for in FOIA. The cost of search, examination, review, separation, and deletion of exempt from nonexempt information may also be charged if the failure to do so will result in unreasonably high costs to Francis Reh Academy because of the nature of the Written Request in a particular instance. If such is the case, Francis Reh Academy shall specifically identify the nature of these unreasonably high costs. The cost for time spent on a Public Record search, on duplicating Public Records by means other than photocopying, on examining and reviewing Public Records, on separating exempt from nonexempt information, and on redacting exempt information from Public Records shall be calculated using the wage of the lowest paid Francis Reh Academy employee capable of searching for, locating, and examining the requested Public Records. Labor costs shall be charged in increments of at least 15 minutes with all partial time increments rounded down. Francis Reh Academy may also add up to 50% of fringe benefit costs to the applicable labor charge amount and will be clearly noted

in the detailed itemization form. Subject to the 50% limitation, Francis Reh Academy shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Notwithstanding the foregoing, 100% of fringe benefit costs may be added to the applicable labor charge if the Requesting Party is notified in writing that the Public Records requested are readily available on Francis Reh Academy's website and the Requesting Party continues to request that Francis Reh Academy provide a physical copy of said record.

Overtime wages shall not be included in the calculation of labor costs unless the Requesting Party specifically approves the use of overtime in writing, and overtime wages are clearly noted in the detailed itemization form.

If Francis Reh Academy does not employ an individual in-house who is capable of separating exempt from non-exempt information in a particular instance, as determined by FOIA Coordinator, it may utilize an outside contractor. In those instances, Francis Reh Academy shall clearly note the name of the individual or firm hired on the detailed itemization form. The cost of the contractor's labor, including necessary review directly associated with separating and deleting exempt information from non-exempt information, shall not exceed an amount equal to six (6) times the minimum employee hourly wage rate calculated under FOIA. Francis Reh Academy will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession. The cost for time spent photocopying documents shall be billed at the hourly wage of the lowest paid full-time clerical employee of Francis Reh Academy.

A Requesting Party 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. Notwithstanding the foregoing, such stipulation must be within the technological capabilities of Francis Reh Academy. A fee will be incurred for the most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media requested.

Fees for responding to any request shall include duplication (copying) costs and mailing costs. Duplication (copying) costs shall be set from time to time by resolution of the Superintendent in an amount that does not exceed 10 cents per page (8½ x 11 and 8½ x 14). Francis Reh Academy shall use the most economical method of duplication (i.e., double-siding, etc.).

Francis Reh Academy shall charge the actual costs of mailing via first class mail unless it is determined that such costs are extremely minimal, such as the cost of a postage stamp for a one ounce letter mailed through the U.S. Postal system. If the copies of the Public Records to be sent to the Requesting Party exceed first-class mail weight limits, those copies will be shipped via U.S. Parcel Post (or by another commercial carrier at similar rates), and the actual cost of shipping will be billed to the Requesting Party. If the Requesting Party asks that the records be shipped or delivered via any other method, the Requesting Party will pay for all costs of the delivery method requested.

Francis Reh Academy may seek a good faith deposit before undertaking the work necessary to respond to a Written Request if, in FIOA Coordinator's judgment, based upon a preliminary review of said request in consultation with the departments/programs that will provide the

relevant Public Records, the total fee to be charged is estimated to exceed \$50.00. The deposit shall not exceed half of the total fee projected. If Francis Reh Academy requires a deposit, it will not process the Written Request until the deposit is paid. A request for a good faith deposit shall include a detailed itemization of the total estimated fee as well as a best-efforts estimate regarding the time frame it will take to provide the Public Records to the Requesting Party. Francis Reh Academy may require a one-hundred percent (100%) deposit from a Requesting Party who has not previously paid a fulfilled FOIA request, provided the requirements in FOIA are met.

All other fees for responding to a FOIA request will be billed when Francis Reh Academy responds to FOIA request. An itemized invoice will be provided by Francis Reh Academy with the written response. Francis Reh Academy reserves the right to require payment in full of all fees incurred in processing a FOIA request before delivering copies of the responsive documents.

FEE REDUCTION OR WAIVER.

A Public Record search may be conducted and copies furnished without charge or at a reduced charge if it is determined 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 for the following exemptions:

- A Requesting Party who is entitled to information under FOIA and who submits an affidavit stating that the Requesting Party has an inability to pay the cost because of indigence. (This caveat shall not apply if the Requesting Party has received discounted copies of Public Records from Francis Reh Academy twice during the calendar year; or the individual requests information in conjunction with outside parties who are offering or providing payment, or other remuneration to the individual to make the Written Request.)
- A non-profit operating under the Developmental Disabilities Assistance Act, and the Protection and Advocacy for Individuals with Mental Illness Act: i. Made on behalf of the organization or its clients. ii. Made for a reason consistent with protecting and advocating for the rights of developmentally disabled and mentally ill persons. iii. Provides documentation of its designation by the state.

DENIALS.

FOIA Coordinator is responsible for the denial of the Written Request and shall sign the written notice of denial (a "Written Denial"). A Written Denial of a request in whole or in part shall contain:

- An explanation of the reason for the determination that the Public Record, or portion of that Public Record, is exempt from disclosure.
- A statement that the Public Record does not exist under the name given by the Requesting Party or by another name reasonable known to Francis Reh Academy.

- A description of a Public Record or information on a Public Record that is separated or deleted pursuant to FOIA, if separation or deletion is made.
- An explanation of the Requesting Party's right to do either of the following:
 - Submit to the Francis Reh Academy Board of Directors a written appeal that specifically states the word "appeal" and identifies the reasons for reversal of the Written Denial.
 - Seek judicial review of the Written Denial under FOIA.
- Notice of the right to receive attorneys' fees and damages as provided under FOIA if, after judicial review, the Court determines that Francis Reh Academy has not complied with FOIA and orders disclosure of all or a portion of a Public Record. Pursuant to FOIA, Francis Reh Academy may make reasonable rules necessary to protect its Public Records and to prevent excessive and unreasonable interference with the discharge of its functions. Therefore, it is the policy of the Francis Reh Academy that FOIA requests that create or result in an excessive and unreasonable interference with the discharge of Francis Reh Academy functions will be denied.

RIGHT TO APPEAL A DENIAL.

If a Requesting Party desires to appeal a Written Denial of a Written Request for a Public Record, in whole or in part, the Requesting Party may submit a written appeal to Francis Reh Academy's Board of Directors or may seek judicial review of the denial, pursuant to FOIA. A written appeal to the Board of Directors shall specifically state the word "appeal" and identify the reasons asserted for the reversal of the denial. Within ten (10) business days after receiving a written appeal, the Board of Directors shall do one of the following:

- Reverse the disclosure denial.
- Issue a written notice to the appellant upholding the denial.
- Reverse the denial in part and issue a written notice to the appellant upholding the denial in part.
- Under Unusual Circumstances, issue a notice extending, for not more than ten (10) business days, the period during which the Board of Directors shall respond to the written appeal. The Board of Directors shall not issue more than one (1) notice of extension for a particular written appeal.

The Board of Directors is not considered to have received a written appeal until its next regularly scheduled meeting after the appeal is submitted. Any failure to respond to an appeal shall be considered a decision to uphold the denial. If an appeal is denied in whole or in part by the Board of Directors, the appellant may seek judicial review of the nondisclosure by commencing an action in Court.

RIGHT TO APPEAL A FEE.

If the Requesting Party believes the fee estimated or charged for the Written Request exceeds the amount permitted under these procedures and guidelines or under FOIA, the Requesting Party is required to submit to the Francis Reh Academy's Board of Directors a written appeal for a fee

reduction that specifically states the word "appeal" and identifies how the required fee is alleged to have exceeded the amount permitted under these procedures and guidelines or FOIA. Within ten (10) business days after receiving a written appeal, the Board of Directors shall do one of the following:

- Waive the fee.
- Reduce the fee and issue a written determination to the Requesting Party indicating the specific basis under FOIA that supports the remaining fee. The determination shall include a certification from the Board of Directors that the statements in the determination are accurate and that the reduced fee complies with these procedures and guidelines and FOIA.
- Uphold the fee and issue a written determination to the Requesting Party indicating the specific basis under FOIA that supports the required fee. The determination shall include a certification from the Board of Directors that the statements in the determination are accurate and that the fee complies with these procedures and guidelines and FOIA.
- Issue a notice extending, for not more than ten (10) business days, the period during which the Board of Directors shall respond to the written appeal. The notice of extension shall include a detailed reason why the extension is necessary. The Board of Directors shall not issue more than one (1) notice of extension for a particular written appeal.

If a Requesting Party disagrees with the Board of Directors' determination, the Requesting Party may commence an action in Court within 45 days of Francis Reh Academy's determination, to seek a fee reduction. If a civil action is commenced against Francis Reh Academy under this provision, Francis Reh Academy is not obligated to complete the processing of the Written Request until the Court resolves the fee dispute.

ENFORCEMENT.

An action seeking a Court ordered disclosure may be commenced in the Court. The burden is on the Francis Reh Academy to sustain its denial. In addition to obtaining a Court Order requiring disclosure, a complainant who prevails in whole or part shall be awarded reasonable attorney's fees plus costs. If the Court determines that the Francis Reh Academy has been arbitrary and capricious in refusing or delaying disclosure of a record, the Court shall order Francis Reh Academy to pay a civil fine of \$1,000 paid into the state treasury. The Court shall also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000 to the Requesting Party. These damages are not assessable against individuals but rather are applicable to Francis Reh Academy.

If the Court determines that Francis Reh Academy willfully and intentionally failed to comply with this Act or otherwise acted in bad faith, the Court shall order Francis Reh Academy to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence, deposited into the state treasury. If the Court determines that Francis Reh Academy has been arbitrary and capricious by charging an excessive fee, the Court shall order Francis Reh Academy to pay a civil fine of \$500 paid into the state treasury. The Court shall also award, in addition to any actual or compensatory damages, punitive damages in

the amount of \$500 to the Requesting Party. These damages are not assessable against individuals but rather are applicable to Francis Reh Academy.

EXEMPTIONS.

Several types of Public Records are exempt from disclosure. Many of those exemptions pertain to law enforcement investigations, custodial and penal institutions, and so forth. Those exemptions that may be applicable to Francis Reh Academy may include, but is not limited to, the following, all of which are subject to the interpretation of Michigan courts:

- Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- Records or information specifically described and exempted from disclosure by statute.
- A Public Record or information that is furnished by the Public Body which originally compiled, prepared, or received the record or information to a public officer or Public Body in connection with the performance of the duties of that public officer or Public Body. However, the considerations originally giving rise to the exempt nature of the Public Record must be applicable.
- Information or records subject to the attorney-client privilege.
- Information or records subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner, or other privilege recognized by statute or court rule.
- A bid or proposal by a Person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or in a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.
- Appraisals of real property to be acquired by the Public Body until (a) an agreement is entered into; or (b) three (3) years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment or academic examination, unless the public interest in disclosure under FOIA outweighs the public interest in nondisclosure.
- Medical, counseling, or psychological evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.
- Communications and notes within a Public Body or between Public Bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the Public Body shows that in a particular instance the public interest in encouraging frank communication between officials and employees of Public Bodies clearly outweighs the public interest in disclosure.
- Testing data developed by a Public Body in determining whether bidders' products meet the specifications for purchase of those products by the Public Body, if disclosure of the

data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the Public Body completes the testing.

- Records of a campaign committee including a committee that receives money from a state campaign fund.
- Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code of 1978, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following: (a) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received; or (b) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.
- Records of a Public Body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the Public Body.
- Records or information relating to a civil action in which the Requesting Party and the Public Body are parties.
- Information or records that would disclose the social security number of an individual.
- Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a Public Body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code of 1931, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a Public Body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.