GOGEBIC COUNTY BOARD OF COUNTY ROAD COMMISSIONERS

RESOLUTION ESTABLISHING POLICY FOR FREEDOM OF INFORMATION ACT REQUESTS

Resolution No. 03-9 of 2020

Recitals

WHEREAS, the Michigan Freedom of Information Act (FOIA), being Act 442 of the Public Acts of 1976, as amended, establishes the public policy of the State of Michigan that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding governmental decision-making consistent with the requirements of the Act; and

WHEREAS, the Gogebic County Board of County Road Commissioners desires to establish this policy relating to requests for public records under the provisions of the FOIA so that those requests can be promptly and efficiently processed consistent with the requirements of the Act;

Resolution

NOW, THEREFORE, BE IT RESOLVED that the Gogebic County Board of County Road Commissioners establishes the following policy for FOIA requests, which shall read in its entirety as follows:

POLICY FOR FREEDOM OF INFORMATION ACT REQUESTS

Section 1. Scope of Policy.

This policy shall only apply to a board, department, commission, council, or agency of the Gogebic County Road Commission that has not exercised its authority as a public body, as defined in the FOIA, to establish procedures for promptly and efficiently processing requests for public records under the provisions of the FOIA consistent with the requirements of the Act. Any public body that desires to establish its own FOIA procedures shall file a copy of those procedures with the Road Commission Clerk. These procedures shall not be effective to exempt the public body from this policy, until the procedures are approved by the Road Commission attorney to assure compliance with the Act.

Section 2. Definitions.

(a) "Cybersecurity assessment" means an investigation undertaken by a person, governmental body, or other entity to identify vulnerabilities in cybersecurity plans.

(b) "Cybersecurity incident" includes, but is not limited to, a computer network intrusion or attempted intrusion; a breach of primary computer network controls; unauthorized access to programs, data, or information contained in a computer system; or actions by a third party that materially affect component performance or, because of impact to component systems, prevent normal computer system activities.

(c) "Cybersecurity plan" includes, but is not limited to, information about a person's information systems, network security, encryption, network mapping, access control, passwords, authentication practices, computer hardware or software, or response to cybersecurity incidents.

(d) "Cybersecurity vulnerability" means a deficiency within computer hardware or software, or within a computer network or information system, that could be exploited by unauthorized parties for use against an individual computer user or a computer network or information system.

(e) “FOIA coordinator” means the Gogebic County Road Commission Clerk or such other individual designated by the Board of County Road Commissioners.

(f) “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 a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(g) “Public body” means the Gogebic County Road Commission, or a board, department, commission, council, or agency thereof.

(h) “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. Public record does not include computer software.

(i) “Unusual circumstances” means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) 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.

(ii) 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 request.

(j) “Writing” means handwriting, typewriting, printing, photostating, 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, hard drives, solid state storage components, or other means of recording or retaining meaningful content.

(k) “Written request” means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

Section 3. FOIA Coordinator; Duties.

(a) The FOIA Coordinator, as defined in this policy, may designate another individual to assist in carrying out the duties specified in this policy and in the FOIA itself.

(b) The FOIA Coordinator shall be responsible for accepting and processing requests for public records under the FOIA and shall be responsible for approving denials under the FOIA. The FOIA Coordinator shall keep a copy of all written requests for public records on file for no less than one (1) year.

(c) The FOIA Coordinator shall review the Road Commission's spam and junk email folders on a regular basis, which shall be no less than monthly to help ensure that requests for public records are processed in a timely manner.

(d) The FOIA Coordinator shall provide a requesting person a reasonable opportunity for inspection and examination of its public records and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. However, in the event that the FOIA Coordinator determines that it is necessary to protect public records from loss, unauthorized alteration, mutilation, or destruction or if the FOIA Coordinator determines that personal inspection of records by a requesting person will cause excessive and unreasonable interference with the discharge of the functions of the various Road Commission departments and agencies, the FOIA Coordinator may determine that only copies of the requested records will be provided and that copies will be prepared in the normal course of business and during normal business hours by Road Commission employees.

(e) The FOIA Coordinator shall make this policy and a written summary of this policy available to the public without charge in response to a written request and upon request by visitors at the Road Commission offices.

(f) If the Road Commission maintains an Internet website, this policy and a written summary of this policy shall be maintained on the Road Commission's website at: *gogebiccountyroadcommission.org* so a link to those documents will be provided in lieu of providing paper copies of those documents.

(g) The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4. Requests for Public Records.

(a) Except as provided in this section, all requests for public records shall be in writing. Requests transmitted by facsimile, electronic mail, and other electronic means shall be considered written requests and shall be deemed received on the following business day. If the FOIA Coordinator determines in the sole exercise of his or her discretion that a request for a public record is simple and limited in scope, then the FOIA Coordinator may process the request, including providing a copy of the public record, without the request being in writing.

(b) If a request for public records is received by a Road Commission employee other than the FOIA Coordinator, the request shall be date-stamped and immediately forwarded to the FOIA Coordinator.

(c) If a person makes a verbal, non-written request for a public record believed to be available on the Road Commission's website, where practicable and to the best ability of the FOIA Coordinator or employee receiving the request, the person shall be informed of the pertinent website address for the requested public record. If the request is made to an employee, that employee shall immediately notify the FOIA Coordinator of the request and the information provided.

(d) If an individual makes a verbal, non-written request for a public record and the FOIA Coordinator determines that the request is not simple and limited in scope, then the FOIA Coordinator shall deliver or mail to the person making the request a written form on which the individual can formally submit his or her request.

(e) All requests for a public record shall describe the public record in sufficient detail to enable the FOIA Coordinator to find the public record.

(f) A request from a person, other than an individual who qualifies as indigent under Section 10(j)(a) of this Policy, must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address.

(g) A person may subscribe to future issuance of public records that are created, issued, or disseminated on a regular basis. Such a subscription is valid for six (6) months, and is renewable. When a public record covered by a subscription is created, the FOIA Coordinator shall deliver or mail a copy of the public record to the person holding the subscription at the address provided for that purpose.

(h) A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator shall therefore deny all such requests on that basis.

Section 5. Time Limitations in which to Respond to Request.

Unless the person making the request agrees in writing to a different time period, the FOIA Coordinator shall respond to the request for a public record within five (5) business days after receiving the request. For written requests made by facsimile, electronic mail, or other electronic transmission, the date of receipt of the request is the day after the electronic transmission is made. The FOIA Coordinator shall respond to the request for a public record by doing one (1) of the following:

(a) Granting the request.

(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than ten (10) business days the period during which he or she will respond to the request. The FOIA Coordinator shall not issue more than one (1) notice of extension for a particular request. Any such notice of extension must specify the reasons for the extension and the date by which the FOIA Coordinator shall respond to the request in the manner provided in (a) - (c) above, which shall be no more than fifteen (15) business days from the date the request was received.

(e) Issuing a written notice indicating that the public record requested is available at no charge on the Road Commission's website.

Section 6. Procedures when Request is Granted.

(a) If the request is granted, or granted in part, the FOIA Coordinator shall require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

(b) The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

(c) Except as provided herein, a copy of this policy and a summary of this policy shall be provided to the requestor free of charge in response to a written request for the policy. Provided, however, that if this policy and a summary of this policy are maintained on the Road Commission's website at: *gogebiccountyroadcommission.org* a link to this policy and a summary of this policy shall be provided in lieu of providing paper copies of these documents.

(d) If the cost of processing a FOIA request is $50 or less, the requester shall be notified of the amount due and where the documents can be obtained.

(e) If the cost of processing a FOIA request is expected to exceed $50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the FOIA Coordinator shall require a good-faith deposit pursuant to Section 10(b) of this policy before processing the request.

(f) In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the Road Commission to process the request and also provide a best efforts estimate of a time frame it will take the FOIA Coordinator to provide the records to the requestor. The best efforts estimate shall not be binding on the Road Commission, but shall be made in good faith and shall strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

Section 7. Records Exempt from Disclosure.

Pursuant to the FOIA the public records specified in Exhibit A, attached hereto and incorporated herein by reference, shall be exempt from disclosure.

Section 8. Denial of Requests for Public Records.

(a) Before denying, in whole or in part, a request for a public record, the FOIA Coordinator shall consult with the Road Commission attorney. The FOIA Coordinator shall provide the Road Commission attorney with whatever information (including a copy of the requested public record) he or she deems necessary to determine whether legal grounds exist to deny, in whole or in part, the request for that public record.

(b) If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, 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 the timelines described in this policy.

(c) If the FOIA Coordinator desires to deny the request, in whole or in part, and the Road Commission attorney concludes that legal grounds exist to support that denial, then the FOIA Coordinator shall issue a written notice denying the request for the public record. The written denial notice must contain the following:

(i) An explanation of the basis under the FOIA or any other statute for the determination that the public record, or a portion of the public record, is exempt from disclosure, if that is the reason for the denial.

(ii) A certificate that the public record does not exist under the name given by or as described by the person making the request or by any other name or description reasonably known to the FOIA Coordinator, if that is the reason for the denial.

(iii) If a separation or deletion is made, a description of the public record or information on the public record that is exempt from disclosure and separated or deleted from the disclosed public record as required by the FOIA, unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

(iv) A full explanation of the requesting person's right to do either of the following:

(1) File a written appeal with the Board of County Road Commissioners, which appeal shall include the word "appeal" in a prominent place on the front page and shall identify the reason or reasons the FOIA Coordinator's denial decision should be reversed.

(2) File a lawsuit in circuit court within 180 days after the final decision denying the request which seeks to compel the FOIA Coordinator to disclose the public record requested.

(v) A notice of the right to receive in a circuit court lawsuit reasonable attorneys' fees, costs, and disbursements if the circuit court determines that the Road Commission has not complied with the FOIA and orders disclosure of all or a portion of the public record requested and of the right to receive compensatory damages and $1,000.00 in punitive damages if the circuit court determines that the Road Commission has arbitrarily and capriciously violated the FOIA.

Section 9. Administrative Appeals.

(a) If the FOIA Coordinator makes a determination to deny all or a portion of a request, the requesting person may submit a written appeal to the Board of County Road Commissioners.

(b) The Board of County Road Commissioners is hereby designated the body vested with authority to hear and decide appeals from decisions by the FOIA Coordinator denying requests for public records under the FOIA.

(c) Any appeal of the FOIA Coordinator's decision denying a request for a public record must be filed in writing with the Road Commission Clerk, must state the word "appeal" in a prominent place on the first page of the documents filed, and must identify the reason or reasons the FOIA Coordinator's denial decision should be reversed. The Road Commission FOIA Appeal Form may be used.

(d) Pursuant to the FOIA, the Board of County Road Commissioners is not deemed to have received the appeal until the first regularly scheduled meeting of the Board of County Road Commissioners following submission of the written appeal.

(e) Within ten (10) days after receiving a written appeal, the Board of County Road Commissioners shall do one (1) of the following:

(i) Reverse the disclosure denial.

(ii) Issue a written notice to the person making the disclosure request upholding the disclosure denial.

(iii) Reverse the disclosure denial in part and issue a written notice to the person making the disclosure request upholding the disclosure denial in part.

(iv) Under unusual circumstances, issue a notice extending for not more than ten (10) business days the period during which the Board of County Road Commissioners will respond to the written appeal. The Board of County Road Commissioners shall not issue more than one (1) notice of extension for a particular written appeal.

(f) In deciding an appeal the Board of County Road Commissioners shall consider the disclosure request without regard to the FOIA Coordinator's decision and shall determine whether the requested public record should be disclosed, in whole or in part, or whether the public record, in whole or in part, is exempt from disclosure under the FOIA.

(g) If the Board of County Road Commissioners fails to respond to a written appeal or upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court within 180 days after the Board of County Road Commissioners' final determination to deny the request.

(h) Whether or not a requestor submitted an appeal of a denial to the Board of County Road Commissioners, he or she may file a civil action in the Circuit Court within 180 days after the Road Commission's final determination to deny the request.

(i) If a court that determines a public record is not exempt from disclosure, it shall order the Road Commission to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

(j) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Road Commission prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

(k) If the court determines that the Road Commission has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Road Commission to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 10. Fees.

(a) The Board of County Road Commissioners shall adopt by separate resolution a schedule of fees to be charged in connection with a request to inspect, copy, or receive copies of a public record under the FOIA.

(b) Good-faith Fee Deposits

(i) If the fee estimate is expected to exceed $50.00 based on a good-faith calculation, the requestor shall be asked to provide a deposit not exceeding one-half of the total estimated fee.

(ii) If a request for public records is from a person who has not paid the Road Commission in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator shall require a deposit of 100% of the estimated fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

(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 sought in the prior written request and remain in the Road Commission's possession.

(3) The public records were made available to the individual, subject to payment, within the time frame estimated by the Road Commission to provide the records.

(4) Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing.

(5) The individual is unable to show proof of prior payment to the Road Commission.

(6) The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

(iii) The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

(1) The person making the request is able to show proof of prior payment in full to the Road Commission.

(2) The Road Commission is subsequently paid in full for the applicable prior written request.

(3) Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the Road Commission.

(iv) If a deposit that is required under Section 10(b) of this policy is not received by the Road Commission within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the Road Commission is no longer required to fulfill the request. Notice of a deposit requirement is considered received 3 days after it is sent, regardless of the means of

transmission. Notice of a deposit requirement must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

(c) Calculation of Fees. The following costs may be included when calculating the fees associated with processing a FOIA request:

(i) Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.

(ii) Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Road Commission.

(iii) Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Road Commission.

(iv) The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the Road Commission's website if you ask for the Road Commission to make copies.

(v) The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the Road Commission's website if you ask for the Road Commission to make copies.

(vi) The cost to mail or send a public record to a requestor.

(d) Unreasonably High Costs.

(i) Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the Road Commission's usual FOIA requests, not compared to the Road Commission's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)

(ii) The following factors shall be used to determine an unreasonably high cost to the Road Commission:

(1) The volume of the public record requested.

(2) The amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.

(3) Whether the public records are from more than one Road Commission department or whether various Road Commission offices are necessary to respond to the request.

(4) The available staffing to respond to the request.

(5) Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

(e) Labor Costs. When calculating labor costs for the purpose of the FOIA fee these labor costs shall be based on all of the following requirements:

(i) All labor costs shall be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there shall be no charge for labor costs.

(ii) Labor costs shall be charged at the hourly wage of the lowest-paid Road Commission employee capable of doing the work in the specific fee category, regardless of who actually performs the work.

(iii) Labor costs shall also include a charge to cover or partially cover the cost of fringe benefits.

(iv) The Road Commission may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.

(v) Overtime wages shall not be included in labor costs unless agreed to by the requestor; overtime costs shall also not be used to calculate the fringe benefit cost.

(vi) Contracted labor costs shall be charged at an hourly rate equal to six (6) times the state minimum hourly wage.

(f) Costs Associated with Non-paper Physical Media. When an individual requests that the public records be provided on a non-paper physical media, the following requirements shall be met, and the following costs shall be included when establishing the FOIA fee:

(i) Computer disks, computer tapes or other digital or similar media shall be at the actual and most reasonably economical cost for the non-paper media.

(ii) This cost shall only be assessed if the Road Commission has the technological capability necessary to provide the public record in the requested non-paper physical media format.

(iii) The Road Commission shall procure any non-paper media and shall not accept media from the requestor in order to ensure integrity of the Road Commission's technology infrastructure.

(g) Costs of Providing paper Copies. The cost to provide paper copies of public records shall be based on the following requirements:

(i) Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper shall not exceed $.10 per sheet of paper. Copies for non-standard sized sheets of paper shall reflect the actual cost of reproduction.

(ii) The Road Commission shall provide copies of public records using double-sided printing, if it is cost-saving and available.

(iii) The cost to mail public records to a requestor shall be based on the following requirements:

(1) The actual cost to mail public records using a reasonably economical and justified means.

(2) The Road Commission may charge for the least expensive form of postal delivery confirmation.

(3) No cost shall be made for expedited shipping or insurance unless specified by the requestor.

(h) Reduced Fee for Failure to Respond to the FOIA Request Timely. If the FOIA Coordinator does not respond to a written FOIA request in a timely manner, the Road Commission shall:

(i) Reduce the labor costs by 5% for each day the Road Commission exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:

(1) The Road Commission's late response was willful and intentional.

(2) The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment.

(3) The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.

(ii) Fully note the charge reduction in the Detailed Itemization of Costs Form.

(i) Waiver of FOIA Fees. The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The Board of County Road Commissioners may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

(j) Discounted FOIA Fees.

(a) Indigence.

(1) The FOIA Coordinator shall discount the first $20.00 of the FOIA fee if the person requesting a public record submits an affidavit stating that they are one (1) of the following:

(A) Indigent and receiving specific public assistance.

(B) If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

(2) An individual is not eligible to receive the discounted fee any of the following apply:

(A) The requestor has previously received discounted copies of public records from the Road Commission twice during the calendar year.

(B) The individual requests information in connection with other persons who are offering or providing payment to make the request.

(3) The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

(b) Nonprofit organization advocating for developmentally disabled or mentally ill individuals. The FOIA Coordinator shall discount the first $20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal 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, if the request meets all of the following requirements:

(1) It is made directly on behalf of the organization or its clients.

(2) It 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.

(3) It is accompanied by documentation of its designation by the state, if requested by the FOIA Coordinator.

(k) FOIA Fees Not Applicable for Sale of Public Records. The fees authorized by this section shall not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by a state statute or by separate resolution or ordinance of the Road Commission.

Section 11. Appeal of Excessive Fee Decision.

(a) If a requestor believes that the fee charged by the Road Commission to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the Board of County Road Commissioners by submitting a written appeal for a fee reduction to the Road Commission Clerk.

(b) The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The Road Commission FOIA Appeal Form (To Appeal an Excess Fee) may be used.

(c) The Board of County Road Commissioners is not considered to have received a written appeal until the first regularly scheduled Board of County Road Commissioners meeting following submission of the written appeal.

(d) Within 10 business days after receiving the appeal, the Board of County Road Commissioners will respond in writing by doing one of the following:

(i) Waiving the fee.

(ii) Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee.

(iii) Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee.

(iv) Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Board of County Road Commissioners will respond to the written appeal. The Board of County Road Commissioners shall not issue more than 1 notice of extension for a particular written appeal.

(e) Where the Board of County Road Commissioners reduces or upholds the fee, the determination must include a certification from the Board of County Road Commissioners that the statements in the determination are accurate and that the

reduced fee amount complies with its publicly available FOIA policy and Section 4 of the FOIA.

(f) Within 45 days after receiving notice of the Board of County Road Commissioners' determination of an appeal, the requesting person may commence a civil action in the County Circuit Court for a fee reduction.

(g) If a civil action is commenced against the Road Commission for an excess fee, the Road Commission is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

(h) An action shall not be filed in circuit court unless one of the following applies:

(i) The Road Commission does not provide for appeals of fees.

(ii) The Board of County Road Commissioners failed to respond to a written appeal as required.

(iii) The Board of County Road Commissioners issued a determination to a written appeal.

(i) If a court determines that the Road Commission required a fee that exceeds the amount permitted under this FOIA policy or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

(j) If the requesting person prevails in court 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. The award shall be assessed against the Road Commission as damages.

(k) If the court determines that the Road Commission has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Road Commission to pay a civil fine of $500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual but shall be assessed against the Road Commission.

Section 12. Severability.

If any section, clause, or provision of this policy be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the policy. The Board of County Road Commissioners hereby declares that it would have passed this policy and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

Section 13. Repeal of Prior FOIA Policy.
Gogebic County Road Commission's prior FOIA policy, if any, is hereby repealed in its entirety.

Section 14. Effective Date.
This policy shall become effective the day after this resolution is published on the Road Commission's website or posted in a conspicuous location in the Road Commission offices.

RESOLUTION DECLARED ADOPTED

GOGEBIC COUNTY BOARD OF COUNTY ROAD COMMISSIONERS

By: _____
Roy D'Antonio, Chairperson

I, the undersigned, the Clerk of the Gogebic County Board of County Road Commissioners , Gogebic County, State of Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Gogebic County Board of County Road Commissioners at its regular meeting held on Monday, March 9, 2020, relative to adoption of the resolution therein set forth; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Dated: Tuesday, March 10, 2020

Patti Hagstrom, Secretary