



POLICY MANUAL

Section: Miscellaneous Policy Title: Freedom of Information Act

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Preamble: Statement of Principles

It is the policy of Summit Pointe that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of governmental bodies. As a community mental health authority created under Michigan's Mental Health Code, Summit Pointe's records, except those produced as part of the peer review process required and made confidential under the Mental Health Code or as otherwise protected from disclosure under state or federal law, rule or regulation, including, without limitation, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Summit Pointe's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

Summit Pointe acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. Summit Pointe also acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

Summit Pointe will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. Summit Pointe's policy is to disclose public records consistent with and in compliance with State law.

Summit Pointe has established the following written procedures and guidelines to implement FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to Summit Pointe and explaining how to understand Summit Pointe's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. These written policies and guidelines shall not apply to requests for medical records, which must comply with, and will be governed by, the Mental Health Code, the Medical Records Access Act, HIPAA, and all other applicable federal or state laws, rules or regulations.

Section 1: General Policies

Summit Pointe designates its Corporate Compliance Director as the FOIA Coordinator. The Corporate Compliance Director is authorized to designate other Summit Pointe staff to act on the Corporate Compliance Director's behalf to accept and process written requests for Summit Pointe's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a Summit Pointe spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request. The FOIA Coordinator shall review Summit Pointe spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with Summit Pointe's Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect Summit Pointe's systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in the Corporate Compliance Director discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

Summit Pointe is not obligated to create a new public record or make a compilation or summary of information that does not already exist. Neither the FOIA Coordinator nor other Summit Pointe staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by Summit Pointe on file for a period of at least one year. Any subpoena from any court, agency, attorney, or any other person that requests the production of records shall immediately be forwarded to the Legal Counsel and falls outside the scope of these policies and guidelines.

Section 2: Requesting a Public Record

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make available a FOIA Request Form for use by the public.

*This is confusing wording and seems to contradict the above statement?

A request must sufficiently describe a public record so as to enable Summit Pointe personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail addressed to Summit Pointe's downtown office located at 175 College Street, Battle Creek, 49037. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. Summit Pointe will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by Summit Pointe on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

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 will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, Summit Pointe will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

Summit Pointe will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.

- Issue a notice indicating that due to the nature of the request Summit Pointe needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on Summit Pointe's website.

When a request is granted:

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on Summit Pointe's website, a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents.

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

If based on a good faith calculation by Summit Pointe the cost of processing a FOIA request is expected to exceed \$50, or if the requestor has not paid in full for a previously granted request, Summit Pointe will require a good-faith deposit pursuant to Section 4 of this policy before processing the FOIA request.

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 Summit Pointe to process the request and also provide a best efforts estimate of a time frame it will take Summit Pointe to provide the records to the requestor. The best-efforts estimate shall be nonbinding on Summit Pointe, but will be made in good faith and will 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.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by Summit Pointe; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the Summit Pointe Board of Directors or seek judicial review in the Calhoun County Circuit Court;
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator or the Corporate Compliance Director designee.

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 Section.

Requests to inspect public records:

Summit Pointe shall provide reasonable facilities and opportunities for persons to examine and inspect non-exempt public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect Summit Pointe's records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Summit Pointe operations.

Requests for certified copies:

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: Fee Deposits

If the fee estimate to provide the requested public records is expected to exceed \$50.00 based on a good-faith calculation by Summit Pointe, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

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

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in Summit Pointe's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by Summit Pointe to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to Summit Pointe; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

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

- The person making the request is able to show proof of prior payment in full to Summit Pointe;
- Summit Pointe is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to Summit Pointe.

Section 5: Calculation of Fees

A fee may be charged for the labor cost of copying/duplication.

A fee will **not** be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information **unless** failure to charge a fee would result in unreasonably high costs to Summit Pointe because of the nature of the request in the particular instance, and Summit Pointe specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to Summit Pointe:

- The particular request incurs costs greater than incurred from the typical or usual request received by Summit Pointe.
- Volume of the public record requested.
- Whether the amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested exceeds 15 minutes.
- Whether public records from various Summit Pointe offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan Freedom of Information Act permits Summit Pointe to charge for the following costs associated with processing a request:

- 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.
- 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 Summit Pointe.
- 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 Summit Pointe.
- 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 Summit Pointe's website if you ask for Summit Pointe to make copies.
- 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 Summit Pointe's website if you ask Summit Pointe to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will 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 will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Summit Pointe employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- Summit Pointe 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.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of 6 times the state minimum hourly wage at the time of the FOIA request.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if Summit Pointe has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- Summit Pointe will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of Summit Pointe's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper cost at least \$.10 per sheet of paper; however, Summit Pointe reserves the right at its sole discretion to charge more. Copies for non-standard sized sheets of paper will be charged differently, but at minimum the actual cost of reproduction; however, Summit Pointe reserves the right at its sole discretion to charge more.
- Summit Pointe will provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- Summit Pointe may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, Summit Pointe must:

- Reduce the labor costs by 5% for each day Summit Pointe exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
 - Summit Pointe's late response was willful and intentional,
 - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - 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.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of 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.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator may waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from Summit Pointe twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit shall be a sworn statement made under penalty of perjury.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The FOIA Coordinator may waive the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the State of Michigan 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:
 - Is made directly on behalf of the organization or its clients.
 - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
 - Is accompanied by documentation of its designation by the state, if requested by the public body.

Section 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, the Corporate Compliance Director may file an appeal to the Summit Pointe Board of Directors of the denial by filing an appeal with the FOIA Coordinator.

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The FOIA Appeal Form (To Appeal a Denial of Records), may be used. The appeal must be filed within 30 days of the denial

Summit Pointe's Board of Directors is not considered to have received a written appeal until the first regularly scheduled Board meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the Board will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Board shall respond to the written appeal. The Board shall not issue more than 1 notice of extension for a particular written appeal.

If the Board fails to respond to a written appeal, or if the Board 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 a civil action in Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the Board, the Corporate Compliance Director may file a civil action in Calhoun County Circuit Court within 180 days after Summit Pointe's final determination to deny the request.

Section 9: Appeal of an Excessive FOIA Processing Fee

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by Summit Pointe to process a FOIA request exceeds the amount permitted by state law or under this policy, the Corporate Compliance Director must first appeal to the Summit Pointe Board of Directors by submitting a written appeal for a fee reduction to the FOIA Coordinator.

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

The Board is not considered to have received a written appeal until the first regularly scheduled Board meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the Board will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Board will respond to the written appeal. The Board shall not issue more than 1 notice of extension for a particular written appeal.

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

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

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

- Summit Pointe does not provide for appeals of fees,
- The Summit Pointe Board failed to respond to a written appeal as required, or
- The Summit Pointe Board issued a determination to a written appeal.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the Summit Pointe Board of Directors or Summit Pointe's management, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the Summit Pointe Board of Directors or Summit Pointe's management, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the Summit Pointe Board of Directors or Summit Pointe's management, and to adopt such administrative rules as the Corporate Compliance Director may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the Board of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective June 1, 2016.

Section 11: Appendix of Summit Pointe FOIA Forms

The FOIA Coordinator is authorized to develop those forms necessary or convenient to process FOIA requests, including, but not limited to the following:

- Request for Public Records Form
- Notice to Extend Response Time Form
- Notice of Denial Form
- Waiver of Fee Form
- Detailed Cost Itemization Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form