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April 30, 2015

Larry Green, Supervisor
Mt. Morris Charter Township
G-5447 Bicentennial Drive
Mt. Morris, Michigan 48458

RE: Amendments to Michigan's Freedom of Information Act

Dear Larry:

As you know, Michigan's Freedom of Information Act (MFOIA) has been amended. The new Act goes into effect July 1, 2015. The major changes to the Act relate primarily to fees and costs which a municipality may charge in responding to a FOIA request and documentation of these fees and costs.

To be in compliance with the amended MFOIA, Mt. Morris Township must establish, make publicly available, and follow procedures and guidelines to implement the Act. It must also create a written summary of procedures and guidelines explaining:

- § How to make a FOIA request;
- § How to understand the township's response;
- § When a deposit is required;
- § How fees are calculated; and
- § How to challenge and/or appeal the township's actions as they relate to FOIA.

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I have included with this correspondence the following documents and forms:

- § Mt. Morris Township Public Summary of FOIA Procedures and Guidelines;
- § Mt. Morris Township FOIA Procedures and Guidelines;
- § FOIA Request for Public Records form;
- § Notice to Extend Response Time for FOIA Request form;
- § Notice of Denial of FOIA Request form;
- § Freedom of Information Act Request Detailed Cost Itemization form;
- § FOIA Appeal Form -- To Appeal a Denial of Records; and
- § FOIA Appeal Form -- To Appeal an Excess Fee.

All of the above documents and forms must be posted on the Mt. Morris Township website. Copies must be kept at the township office and provided at no cost to the public upon request.

In short, under the new act, Mt. Morris Township **may** charge for labor costs incurred in searching, locating, examining, copying, and separating or deleting exempt information from non-exempt information when responding to a FOIA request.

The township may not charge more than the hourly wage of its lowest paid employee (including fringe benefits in certain instances) capable of performing the task in question, regardless of who actually responds to the request and whether the lowest paid employee is available.

All labor costs must be itemized in 15-minute increments. If the search takes less than 15 minutes, no labor fee shall be charged.

In the case of separating exempt from non-exempt information, the township may contract this service out if the FOIA coordinator believes there is no one at the township who is capable of performing the task. The total hourly labor cost for such contracted labor may not exceed 6 times the state minimum wage.

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The township may also recover the cost of paper copies (not to exceed 10 cents per sheet), discs, flash drives, envelopes, and postage.

A detailed itemization of all costs sought to be recovered must be included with each FOIA response.

The township may require a deposit of one-half the estimated cost to respond to a FOIA request if the estimated cost of response is greater than \$50.00. Again, a detailed itemization must be included with the response.

The township may waive the first \$20.00 of its bill for a FOIA request if the requestor is indigent or if the request is made on behalf of certain non-profit organizations.

If the township is late with its response it must reduce its fee by 5% for each date it is tardy, up to a total of 50% if the delay is wilful and intentional or if the FOIA language or its equivalent is found within the first 250 words of the request. If a charge reduction is imposed, it must be noted in the itemization.

Finally, remember the MFOIA provides that a public body may provide copies of public records for free or at a reduced rate if production of the records can be considered as primarily benefitting the general public.

The Act also provides that although a labor charge may be imposed for the copying of documents, no labor charge shall be imposed for the cost of searching, examining, reviewing, and deleting exempt from non-exempt information unless failure to charge a fee for these services would result in unreasonably high costs to the township **and the township specifically identifies the nature of these unreasonably high costs.**

What this means is if Mt. Morris Township chooses to charge for costs associated with responding to a FOIA request, the costs will be limited to the labor cost for copying documents and the cost of paper, discs, flash drives, etc. unless the township can demonstrate that failure to charge labor fees for searching, locating, and/or separating or deleting exempt from non-exempt information would cause the township to incur unreasonably high costs. Unreasonably high costs are those which are excessive and beyond those normally incurred by a township in responding to a FOIA request.

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The following factors may be used to determine whether Mt. Morris Township will incur an unreasonably high cost in responding to a FOIA request:

- § The volume of public records requested;
- § The amount of time spent to search for, examine, review, and separate exempt from non-exempt information in the records requested;
- § Whether the public records are from more than one township department or whether various township offices are 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 penalties for failure to comply with provisions of the new FOIA Act have been substantially increased, so it is imperative the township understands its obligations under the act and has its system in place prior to July 1, 2015.

Toward that end, I suggest that prior to July 1, 2015, the township:

- § Adopt by resolution the attached *Mt. Morris Township Public Summary of FOIA Procedures and Guidelines*;
- § Adopt by resolution the attached *Mt. Morris Township FOIA Procedures and Guidelines*, with all forms referenced therein;
- § Post all the above documents and forms on the township's website;
- § Print paper copies of each of these documents and forms and have them available to the public free of charge;
- § Determine the hourly wage of all employees, including fringe benefits, so all wage information is available for itemization;
- § If not already done, clearly identify the township's FOIA coordinator or designee so any FOIA request is immediately forwarded to this person.

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The enclosed documents explain in greater detail the changes made by the new Public Act. Please read them carefully and give me a call if you have any questions.

Sincerely,

Leo P. Carey
Attorney At Law

LPC/sm

Enclosures

cc: Brenda Ashley, Mt. Morris Charter Township Clerk