

**VILLAGE OF NEWBERRY
VILLAGE COUNCIL MEETING
JULY 31, 2020
Meeting Location: ELECTRONIC MEETING
Meeting Time: 10:00AM
SPECIAL SESSION**

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- A. Village Council – Regular Session – Tuesday, July 21, 2020 at 6:00 PM – request to table until next regular session on August 18, 2020

5. PETITIONS AND COMMUNICATIONS

- A. FOIA - Appeal for Denial of Records from Charles Mesloh

6. PUBLIC COMMENTS – At the conclusion of the official business and public hearings, the agenda provides for public comment on any other matters citizens may wish to bring to the attention of the Village Council. Please limit comments to 3 minutes.

7. ASSIGNMENT OF PUBLIC COMMENT RESPONSE

8. COMMENTS BY COUNCIL MEMBERS

9. ADJOURNMENT – SPECIAL SESSION



**VILLAGE OF NEWBERRY
NOTICE OF ELECTRONIC PUBLIC MEETING
VILLAGE COUNCIL – 07/31/2020, 10:00AM**



Notice is hereby given that the VILLAGE OF NEWBERRY COUNCIL will hold an electronic public SPECIAL MEETING on JULY 31, 2020 beginning at 10:00AM

The reasons for holding an electronic public meeting are to limit the spread of COVID-19 and to remain in compliance with Executive Order 2020-115. The JULY 31 Village Council SPECIAL Meeting will be held virtually, and council members, staff and the public will attend remotely through Zoom audio conferencing. This is permitted via Executive Order 2020- 154, which temporarily authorizes remote participation in public meetings and hearings.

Public Participation

There will be two options for public participation in this meeting; phone conferencing or written comment. There will be two public comment periods for the meeting, as listed on the meeting agenda. Comments will be limited to three minutes and speakers must give their name and address.

Members of the public wishing to call in to listen to the meeting and/or to make a public comment over the phone will need to do one of two things:

- To access the audio via computer or mobile device the public should use the following link (you will need to download the free Zoom App):
<https://us02web.zoom.us/j/83972066067>
- To access the audio via phone please call: 1-888-475-4499 or 1-877-853-5257 and enter the meeting ID 839 7206 6067# and follow the prompts.

When participating via computer or phone conferencing, participants will be placed into a virtual waiting room/on-hold until the meeting begins. Once the meeting begins, the public will be muted until Public Comment portions of the meeting are reached. The public will be able to hear the meeting taking place but will not be able to make comments or interject. Once a Public Comment section begins, the Interim Village Manager will go through the list of participants and provide each commenter with the opportunity to address the board. This will be done via role call based on the last four digits of your call-in telephone number and/or your name as it appears on the computer-based calling feature.

Members of the public, whether or not they are joining the electronic public meeting, may submit written comments or ask questions* regarding any business that will come before the Council. Written comments and questions may be submitted at any time. Those submitted prior to 9AM on July 31, 2020 will be read aloud during the public comment portion of the agenda. Written comments submitted after 9AM on July 31, 2020 will be included in the packet for the August 18, 2020 meeting. The Village reserves the right to summarize long written comments and questions rather than reading them aloud but will provide Council members the full text of these comments following the meeting.

*To be considered for inclusion in the agenda packet or to be read aloud during the meeting, comments and questions must include the name and home address of the person submitting them and must not include language that would be considered vulgar or be interpreted as hate speech or fighting words. The comments and questions should also indicate the date of the electronic public meeting for which they are being submitted.

Written comments and questions should be submitted to awatkins@newberrymi.gov or mailed to or dropped off at the Village Office.

Persons with disabilities who require assistance in order to participate in the electronic public meeting should contact the Village at the earliest opportunity by emailing awatkins@newberrymi.gov or by calling 906-293-3433.

Village: Keep original and provide copy of both sides, along with Public Summary, to requestor at no charge.

Village of Newberry, Luce County
302 E. McMillan Ave.
Newberry, MI 49868
Phone: (906) 293-3433

Denial Appeal Form

FOIA Appeal Form—To Appeal a Denial of Records
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: 2020-01-CM **Date Received:** _____ Check if received via X Email Fax Other Electronic Method
Date of This Notice: _____ **Date delivered to junk/spam folder:** _____
(Please Print or Type) **Date discovered in junk/spam folder:** _____

Name Charles Mesloh	Phone
Firm/Organization	Fax
Street 502 Newberry Avenue	Email
City Newberry	State MI Zip 49868

Request for: Copy Certified copy Record inspection Subscription to record issued on regular basis
Delivery Method: Will pick up Will make own copies onsite Mail to address above Email to address above
 Deliver on digital media provided by the township: _____

Record(s) You Requested: *(Listed here or see attached copy of original request)* Please see attached copy of original request.

Reason(s) for Appeal:

The appeal must specifically identify the reasons for the appeal of the denial. You may use this form or attach additional sheets: **Please see attached.**

Charlie Mesloh

Requestor's Signature:

Date: July 17, 2020

Village Response:

The Village must provide a response within 10 business days after receiving this appeal, including a determination or taking one 10-business day extension.

Village Extension: We are extending the date to respond to your FOIA denial appeal for no more than 10 business days, until _____ *(month, day, year)*. Only one extension may be taken per FOIA appeal.

Unusual circumstances warranting extension: _____

If you have any questions regarding this extension, contact: _____

Village Determination: Denial Reverse Denial Upheld Denial Reversed in Part and Upheld in Part

Written basis for Village determination: _____

Notice of Requestor's Right to Seek Judicial Review

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the Court determines that the County has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. (See back of this form for additional information on your rights.)

Signature of FOIA Coordinator:

Date:

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240a.added Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.

Sec. 10a.

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body 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 under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Waive the fee.

(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section 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 public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body 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 next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

History: Add. 2014, Act 563, Eff. July 1, 2015

**Charles Mesloh
502 Newberry Ave
Newberry, MI 49868**

Attachment to FOIA Appeal Form – To Appeal a Denial of Records

The response from the Village of Newberry to the ten (10) FOIA requests dated June 18, 2020, from the Interim Village Manager, contain numerous errors and inconsistencies. There are blatant violations of the Michigan Freedom of Information Act requirements and it does not adhere to Village of Newberry FOIA policies which are located on the Village of Newberry website, and FOIA states “[i]t is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.” MCL 15.231(2).

Violations of Michigan FOIA

Of the ten (10) FOIA requests for public records, seven (7) contained information that were extensively “denied in part” via redaction (FOIA requests 1,2,3,6,7,8,10), and three (3) were completely denied (FOIA requests 4,5,9).

At no point does the response from the Village of Newberry provide any statements of justification for the information being “denied in part” via redaction in seven (7) of the requests. As per the Michigan FOIA, the burden of proof for exemption from disclosure rests with the public body asserting its application. To meet this burden, the public body claiming exemption should provide complete particularized justification. See for example *Detroit Free Press v City of Warren*, 250 Mich App 164; 645 NW2d 71, 73

(2002) and *Shellum v Michigan Employment Sec Com'n*, 194 Mich App 474; 487 NW2d 490, 491 (1992).

Any exemptions to disclosure being claimed by a public body must be narrowly interpreted, and the burden of proof is on the party claiming exemption. See for example *Swickard v Wayne Co Med Examr*, 438 Mich 536, 541; 475 NW2d 304, 306 (1991) and *DeMaria Bldg Co, Inc v Dept of Mgt & Budget*, 159 Mich App 729, 732; 407 NW2d 72, 73 (1987).

The Village of Newberry applies broad sweeping exemptions for disclosure of public records but fails to provide any explanation or justification for these exemptions thus violating the Michigan FOIA.

Violations of Village of Newberry FOIA Policy

In addition, the response provided does not adhere to the requirements cited in the document titled: Village of Newberry FOIA Procedures and Guidelines, (VON, 2015) that is located on the Village of Newberry's website, which states,

"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 the Village; 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 office of the Village Manager or seek judicial review in the County Circuit Court;

- An explanation of the right to receive attorneys' fees, costs, and disbursements as well 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. (pg. 4)."

The only information provided on how to submit an appeal was for excessive fees and not for a denial or denial in part. FOIA policy for the Village of Newberry was willfully and capriciously ignored as the response in question does not meet the criteria detailed above. Thus, the Village of Newberry violated their own FOIA policy.

FOIA Request #1

FOIA request #1 was extensively "denied in part" for communication records for an approximately one-year period for certain Village elected officials. The Village violated Michigan FOIA and Village of Newberry policy because no justification was provided for redacting any information.

I am submitting this appeal seeking a reversal of the "denial in part" of my FOIA request #1.

FOIA Requests #2 and #3

FOIA requests #2 and #3 were "denied in part" for phone bills of the Village of Newberry. The Village violated Michigan FOIA and Village of Newberry policy because no justification was provided for redacting any information.

I am submitting this appeal seeking a reversal of the "denial in part" of my FOIA requests #2 and #3.

FOIA Requests #4 and #5

FOIA requests #4 and #5 sought official Village communications by Village Council members Stokes, Freese, and Hardenbrook as well as other communications regarding the Village of Newberry and Jennifer James-Mesloh. The requests were denied on the basis that they did not seek “public records” under MCL 15.232(i). Importantly, MCL 15.232(i) defines “public record” to mean “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function.” A record of calls made by Village Council members regarding Village business, regardless of the device on which it occurs, clearly falls within the definition of “public record.” Additionally, the Village’s position that a public official can simply avoid transparency by conducting official Village business on their personal devices runs contrary to the public policy of this state, as well as, the transparency and pro-disclosure purpose of FOIA.

I am submitting this appeal seeking a reversal of the denial of FOIA requests #4 and #5.

FOIA Request #6

FOIA request #6 was “denied in part” for official Village communications by Village Council members Stokes, Freese, and Hardenbrook regarding the Village of Newberry and Jennifer James-Mesloh. The Village violated Michigan FOIA and Village of Newberry policy because no justification was provided for redacting any information.

I am submitting this appeal seeking a reversal of the “denial in part” of my FOIA request #6.

FOIA Request #7

FOIA request #7 was extensively “denied in part” for official Village communications by Village staff, over an approximately 4-month period, regarding Jennifer James-Mesloh. The Village violated Michigan FOIA and Village of Newberry policy because no justification was provided for redacting any information.

I am submitting this appeal seeking a reversal of the “denial in part” of my FOIA request #7.

FOIA Request #8

FOIA request #8 was “denied in part” for documents or official Village communications between Council members and/or Village staff over an approximate one-year time frame that mention the word “malfeasance.” The Village violated Michigan FOIA and Village of Newberry policy because no justification was provided for redacting any information.

I am submitting this appeal seeking a reversal of the “denial in part” of my FOIA request #8.

FOIA Request #9

Regarding FOIA request #9, official Newberry Village Council meeting minutes dated August 20, 2019 state that Council member Freese made a motion, which was supported by Village President Stokes to suspend Dr. James-Mesloh’s Village Manager contract “for reasons of malfeasance”. Request #9 seeks documents supporting Council member Freese’s motion. The request was denied on the basis that it did not sufficiently describe a public record. However, as stated by the Court of Appeals “[i]n keeping with the FOIA’s stated purpose of granting all persons full and complete information regarding governmental affairs, ‘[t]he Legislature did not impose detailed or technical requirements as a precondition for granting the public access to information.

Instead, the Legislature simply required that any request be sufficiently descriptive to allow the public body to find public records containing the information sought.” *Buckmaster v Dept of State*, 327 Mich App 469, 478; 934 NW2d 59, 63 (2019) (citing *Herald Co v Bay City*, 463 Mich 111, 121, 614 NW2d 873 (2000)). Furthermore, the Michigan Court of Appeals has stated that a public body acts in an arbitrary and capricious manner by repeatedly refusing to look for a record so described. See *Kincaid v Dept of Corr*, 180 Mich App 176, 182; 446 NW2d 604, 607 (1989).

Presumably, a council member would not make an allegation of malfeasance against a Village employee unless he or she had some type of evidence in support of the allegation. That being said, if the council member did not have any documentation supporting the motion, then the appropriate response to my request would be that no such documents exist.

FOIA Request #10

FOIA request #10 was “denied in part” for approximately 4-months of “instant message” communications that occurred between Village staff members. The Village violated Michigan FOIA and Village of Newberry policy because no justification was provided for redacting any information. I am submitting this appeal seeking a reversal of the “denial in part” of my FOIA request #10.

I ask the Village to reconsider all of its FOIA denials.

Sincerely,

A handwritten signature in blue ink that reads "Charlie Mesloh". The signature is written in a cursive, slightly slanted style.

Charles Mesloh

VILLAGE OF NEWBERRY



302 East McMillan Avenue, Newberry, MI 49868 Phone: 906-293-3433 Fax: 906-293-8890

June 18,2020

Charles Mesloh
502 Newberry Avenue
Newberry, MI 49868
cmesloh@yahoo.com

Re: FOIA Request Received June 11, 2020, our Record #2020-01-CM

Dear Charles Mesloh:

This notice is issued in response to your request received 06/11/2020, asking for information under the Freedom of Information Act (FOIA), MCL 15.231, *et.seq.*

Regarding request 2020-01-CM-001: All emails sent and received by Lori Stokes, Catherine Freese, and Dan Hardenbrook between the dates of November 8, 2018 - November 27, 2019.

Your request is granted as to existing, non-exempt public records in the possession of the Village of Newberry (VON) that fall within the scope of your request. To process your request, the VON estimates a FOIA processing fee of (\$10,279.17) to search for, retrieve, review, examine, and separate exempt material, if any. Included is a copy of the cost estimate invoice for these records.

Upon receipt of a deposit via check or money order for (\$5,139.00), (one half of the total estimated amount) made payable to the Village of Newberry and sent to the Interim Village Manager, 302 E. McMillan, the VON will complete the processing of your request. Your deposit payment must include the specific request number the funds should be applied to.

You will be notified of the balance due before release of the records, and of the statutory basis for exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The VON estimates a processing time of (120) business days after receipt of payment.

Under the FOIA section 10a, you have the right to appeal the fee to the head of this public body.

As set forth under section 4(14)of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA MCL, 15.240a, the VON must receive the required

VILLAGE OF NEWBERRY



302 East McMillan Avenue, Newberry, MI 49868 Phone: 906-293-3433 Fax: 906-293-8890

deposit within 45 days after your statutorily determined receipt of this notice, which is 08/05/2020, otherwise the FOIA request will be considered abandoned and the VON will not be required to fulfill the request.

Regarding request 2020-01-CM-002 & 2020-01-CM-003: All phone bills for Village landline phones which document calls incoming and outgoing between the dates of August 1, 2019 – October 31, 2019 & All phone bills for Village landline phones which document calls incoming and outgoing between the dates of November 1, 2019 – November 27, 2019.

Your request is granted as to existing, non-exempt public records in the possession of the Village of Newberry (VON) that fall within the scope of your request. To process your request, the VON estimates a FOIA processing fee of (\$81.76) to search for, retrieve, review, examine, and separate exempt material, if any. Included is a copy of the cost estimate invoice for these records.

Upon receipt of a deposit via check or money order for (\$40.88), (one half of the total estimated amount) made payable to the Village of Newberry and sent to the Interim Village Manager, 302 E. McMillan, the VON will complete the processing of your request. Your deposit payment must include the specific request number the funds should be applied to.

You will be notified of the balance due before release of the records, and of the statutory basis for exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The VON estimates a processing time of (10) business days after receipt of payment.

Under the FOIA section 10a, you have the right to appeal the fee to the head of this public body.

As set forth under section 4(14)of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA MCL, 15.240a, the VON must receive the required deposit within 45 days after your statutorily-determined receipt of this notice, which is 08/05/2020, otherwise the FOIA request will be considered abandoned and the VON will not be required to fulfill the request.

Regarding request 2020-01-CM-004: All phone bills for Lori Stokes, Catherine Freese, and Dan Hardenbrook which document calls incoming and outgoing between the dates of August 1, 2019 – October 31, 2019 regarding anything related to the Village of Newberry and/or Jennifer James-Mesloh. This includes personally owned landlines and cell phones.

Your request is denied. Phone bills for personally owned land lines and cell phones are not a “public record” under the FOIA definition in MCL 15.232(i).

VILLAGE OF NEWBERRY



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Regarding request 2020-01-CM-005: All phone bills for Lori Stokes, Catherine Freese, and Dan Hardenbrook which document calls incoming and outgoing between the dates of November 1, 2019 – November 27, 2019 regarding anything related to the Village of Newberry and/or Jennifer James-Mesloh. This includes personally owned landlines and cell phones. Please provide once the bills have been received.

Your request is denied. Phone bills for personally owned land lines and cell phones are not a “public record” under the FOIA definition in MCL 15.232(i).

Regarding request 2020-01-CM-006: All documents, excluding emails, created, received, or in the possession of Lori Stokes, Catherine Freese and Dan Hardenbrook that reference or refer to Jennifer James-Mesloh by any derivative of her name, or job title between the dates of November 8, 2018 - November 27, 2019. This includes all handwritten notes taken at Council meetings, notes made on Council packets, notes taken at Village Committee meetings, text messages on a personal cell phone, or any other type of document.

Your request is granted as to existing, non-exempt public records in the possession of the Village of Newberry (VON) that fall within the scope of your request. To process your request, the VON estimates a FOIA processing fee of (\$826.26) to search for, retrieve, review, examine, and separate exempt material, if any. Included is a copy of the cost estimate invoice for these records.

Upon receipt of a deposit via check or money order for (\$413.13), (one half of the total estimated amount) made payable to the Village of Newberry and sent to the Interim Village Manager, 302 E. McMillan, the VON will complete the processing of your request. Your deposit payment must include the specific request number the funds should be applied to.

You will be notified of the balance due before release of the records, and of the statutory basis for exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The VON estimates a processing time of (60) business days after receipt of payment.

Under the FOIA section 10a, you have the right to appeal the fee to the head of this public body.

As set forth under section 4(14)of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA MCL, 15.240a, the VON must receive the required deposit within 45 days after your statutorily determined receipt of this notice, which is 08/05/2020, otherwise the FOIA request will be considered abandoned and the VON will not be required to fulfill the request.

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Regarding request 2020-01-CM-007: All documents created, received, or in the possession of Village staff that reference or refer to Jennifer James-Mesloh by any derivative of her name, or job title between the dates of August 1, 2019 - November 27, 2019. This includes all emails sent and received, handwritten notes taken at Council meetings, handwritten notes made on Council packets, handwritten notes taken at Village Committee meetings, text messages on a personal or Village cell phone, or any other type of document. Please exclude any text messages or emails sent to or received from Jennifer James-Mesloh during this timeframe by any Village staff.

Your request is granted as to existing, non-exempt public records in the possession of the Village of Newberry (VON) that fall within the scope of your request. To process your request, the VON estimates a FOIA processing fee of (\$8,411.76) to search for, retrieve, review, examine, and separate exempt material, if any. Included is a copy of the cost estimate invoice for these records.

Upon receipt of a deposit via check or money order for (\$4,205.88), (one half of the total estimated amount) made payable to the Village of Newberry and sent to the Interim Village Manager, 302 E. McMillan, the VON will complete the processing of your request. Your deposit payment must include the specific request number the funds should be applied to.

You will be notified of the balance due before release of the records, and of the statutory basis for exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The VON estimates a processing time of (120) business days after receipt of payment.

Under the FOIA section 10a, you have the right to appeal the fee to the head of this public body.

As set forth under section 4(14) of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA MCL, 15.240a, the VON must receive the required deposit within 45 days after your statutorily determined receipt of this notice, which is 02/06/2019, otherwise the FOIA request will be considered abandoned and the VON will not be required to fulfill the request.

VILLAGE OF NEWBERRY



302 East McMillan Avenue, Newberry, MI 49868 Phone: 906-293-3433 Fax: 906-293-8890

Regarding request 2020-01-CM-008: All documents created, received, or in the possession of Village Council members and/or Village staff that contain the word “malfeasance” between the dates of November 8, 2018 – November 27, 2019. This includes all emails sent and received, handwritten notes taken at Council meetings, handwritten notes made on Council packets, handwritten notes taken at Village Committee meetings, text messages on a personal or Village cell phone, or any other type of document.

Your request is granted as to existing, non-exempt public records in the possession of the Village of Newberry (VON) that fall within the scope of your request. To process your request, the VON estimates a FOIA processing fee of (\$1,500.47) to search for, retrieve, review, examine, and separate exempt material, if any. Included is a copy of the cost estimate invoice for these records.

Upon receipt of a deposit via check or money order for (\$750.23), (one half of the total estimated amount) made payable to the Village of Newberry and sent to the Interim Village Manager, 302 E. McMillan, the VON will complete the processing of your request. Your deposit payment must include the specific request number the funds should be applied to.

You will be notified of the balance due before release of the records, and of the statutory basis for exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The VON estimates a processing time of (60) business days after receipt of payment.

Under the FOIA section 10a, you have the right to appeal the fee to the head of this public body.

As set forth under section 4(14) of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA MCL, 15.240a, the VON must receive the required deposit within 45 days after your statutorily-determined receipt of this notice, which is 08/05/2020, otherwise the FOIA request will be considered abandoned and the VON will not be required to fulfill the request.

Regarding request 2020-01-CM-009: All documents created, received, or in the possession of Village Council members and/or Village staff that provide evidence or support the accusation that Jennifer James-Mesloh committed malfeasance or any wrongdoing during the course of her employment with the Village of Newberry between the dates of January 17, 2017 – October 17, 2019. This includes all emails sent and received, handwritten notes taken at Council meetings, handwritten notes made on Council packets, handwritten notes taken at Village Committee meetings, text messages on a personal or Village cell phone, or any other type of document.

Your request is denied. A request for documents “that provide evidence or support the accusation that Jennifer James-Mesloh committed malfeasance or any wrongdoing during the course of her employment” would require a compilation which is not required by MCL 15.233(4). The request for the Village to locate documents that “provide evidence or support

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the accusation...[of] malfeasance or any wrongdoing” does not describe any public record sufficiently to enable the Village to find a public record as required by MCL 15.233(1). Finally, the FOIA does not require a public body to make subjective determinations as to what is evidence or support of an accusation.

Regarding request 2020-01-CM-010: All messages sent and received through Skype Business for all Village staff between the dates of August 1, 2019 – November 27, 2019.

Your request is granted as to existing, non-exempt public records in the possession of the Village of Newberry (VON) that fall within the scope of your request. To process your request, the VON estimates a FOIA processing fee of (\$239.32) to search for, retrieve, review, examine, and separate exempt material, if any. Included is a copy of the cost estimate invoice for these records.

Upon receipt of a deposit via check or money order for (\$119.66), (one half of the total estimated amount) made payable to the Village of Newberry and sent to the Interim Village Manager, 302 E. McMillan, the VON will complete the processing of your request. Your deposit payment must include the specific request number the funds should be applied to.

You will be notified of the balance due before release of the records, and of the statutory basis for exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The VON estimates a processing time of (10) business days after receipt of payment.

Under the FOIA section 10a, you have the right to appeal the fee to the head of this public body.

As set forth under section 4(14)of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA MCL, 15.240a, the VON must receive the required deposit within 45 days after your statutorily determined receipt of this notice, which is 08/05/2020, otherwise the FOIA request will be considered abandoned and the VON will not be required to fulfill the request.

VILLAGE OF NEWBERRY



302 East McMillan Avenue, Newberry, MI 49868 Phone: 906-293-3433 Fax: 906-293-8890

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal a denial to the Newberry Village Council or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the Village has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240.

The VON's FOIA procedures and guidelines can be accessed at www.villageofnewberry.com.

Sincerely,

A handwritten signature in cursive script that reads "Allison Watkins". The signature is written in black ink and is positioned above the typed name.

Allison Watkins, M.P.A.
Interim Village Manager