

12. Project Communications, FOIAs, and NDAs

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Industrial projects **move fast** and **attract attention**.

Communities are often trying to do two things at once—protect legitimate confidential information and maintain public trust through a fair, predictable process. When communication breaks down, FOIA becomes the default channel for residents seeking information, and rumors can fill whatever gaps remain. But this is avoidable. **This tool is a practical guide for local units of government on three linked topics:**

- 1. Preventing unnecessary FOIAs through proactive communication.
- 2. Using NDAs appropriately and narrowly.
- 3. Setting project communication protocols that keep complex projects orderly, transparent, and defensible.

Key definitions include the following:

FOIA. Michigan's Freedom of Information Act (PA 442 of 1976). Provides public access to public records held by government bodies.

FOIA request. A formal or informal request by any person or entity to receive copies of or inspect public records from a unit of government.

NDA. Non-Disclosure Agreement. A legally binding contract establishing confidentiality between parties to protect sensitive information.

OMA. Michigan's Open Meetings Act (PA 267 of 1976). Requires that public bodies conduct business in meetings open to the public, with limited exceptions.

Closed session. A meeting closed to the public, permitted only for specific purposes enumerated in the OMA, such as attorney–client privilege, property acquisition, or pending litigation. Must be properly noticed and voted into by the public body.

Information Governance

Many FOIA and NDA problems arise from unclear internal practices. Before a project becomes public, establish basic information management protocols.

Document management:

Store project files on shared municipal drives, not personal computers, phones, or personal cloud accounts.

Avoid using text messages or personal email for project-related discussions. In many cases, these are still subject to FOIA regardless of the device or account used.

Label drafts clearly as drafts. Include dates and version numbers.

Avoid creating informal notes, side memos, or commentary outside official project records. If it exists, it may be discoverable.

Confirm that record retention practices align with your municipality's adopted records retention schedule.

Why This Matters

Good information governance supports proactive public communication and reduces unnecessary exposure in a FOIA response. When documents are organized, labeled, and stored properly, staff can respond to requests efficiently and accurately, rather than scrambling to locate files scattered across personal devices and email threads.



Photo by LogicalDOC.

Communication Protocols

Industrial projects become contentious when messaging is inconsistent, unclear, or absent. Assume that constituents will be curious and watching closely. Establish communication protocols at project kickoff, well before any rumor cycles begin.

Set expectations with all parties.

At the start of any significant industrial project, align messaging expectations with:

- Elected and appointed officials
- Municipal staff
- The developer or applicant team
- Local and regional economic development organizations
- Relevant state partners
- Consultants acting in a staff or advisory capacity

Establish a communication structure.

Agree early on about who handles what. Document this structure internally so there is no ambiguity when questions start arriving.

Municipal spokesperson. Who speaks for the community on this project? It could be the city manager, township supervisor, planning director, mayor, or others, but this should be explicit.

Technical questions. Who answers questions about infrastructure, site conditions, and review status? It is usually the planning director, engineer, or community development director.

Media inquiries. Who responds to reporters? This should be a single point of contact to prevent conflicting statements.

Project updates. Who maintains the project webpage, FAQ document, and public timeline?

Applicant coordination. Who is the primary liaison between the municipality and the developer's team?

Messaging Discipline

Maintain consistent messaging across staff and consultants. Everyone involved should be working from the same set of facts.

Prepare elected officials early on the approval process. Remind them that the local review process includes multiple points where conditions can be imposed, improvements required, or an application denied. This is not a rubber stamp.

Do not let confidentiality become silence. Where you cannot share specifics, address speculation with plain-language explanations of the process and its boundaries. Silence reads as concealment, and surprise breeds contempt.

When in doubt, communicate what you can rather than saying nothing at all.

Media Coordination

Media confusion frequently triggers increased public suspicion and FOIA requests. Get ahead of this by establishing media protocols before the first inquiry arrives.

- Align on announcement timing between the municipality, the developer, and state partners.
- Determine whether public statements will be joint or separate, and draft them in advance.
- Prepare three to five key message points that all parties can reference consistently.
- Avoid conflicting statements across agencies. A developer saying one thing while the community says another is the fastest way to erode credibility.

Decide how social media comments will be addressed.

Identify the various communication channels that will be used, understanding the deadlines for publication of each. Name the point of contact, website address, or other sources that can be referred to for additional information.

FAQs: The Most Effective Trust-Building Tool

A well-maintained Frequently Asked Questions (FAQ) document reduces FOIAs, improves the quality of public meetings, and limits the spread of misinformation.

It provides a predictable baseline of information without requiring one-off responses to individual inquiries.

A strong FAQ answers the questions residents are actually asking:

- What is being proposed, and what is not?
- What stage is the project in right now?
- What approvals are required, and when will they be considered?
- How can the public participate, and when?
- What protections apply, including buffers, truck routes, environmental standards, design requirements?
- Where will updates be posted?

Be sure to host the FAQ in an easy-to-access location on the municipal website and share through other channels. Update FAQs regularly as the project evolves. *See FAQ Recommendations in Conducting a Successful Public Meeting.*

Managing Early-Stage Conversations

Many industrial projects begin informally.

A site selector calls, a developer inquires about utility capacity, or a state economic development partner makes an introduction. These early conversations are often the most delicate because they involve market-sensitive information, preliminary feasibility assessments, and parties who have not yet committed to anything.

How a community handles this phase sets the tone for everything that follows.

Best practices:

- Involve municipal counsel early to define the boundaries of what can and cannot be discussed, and with whom.
- Keep internal distribution lists focused and documented. Not everyone needs to know everything at this stage, but who knows what should be tracked.
- Avoid making policy commitments or zoning assurances before formal review. Saying “we can make that work” in a preliminary conversation can create expectations that are difficult to walk back.

- Prepare language explaining why certain details cannot yet be shared. Staff should not have to improvise responses under pressure.
- Plan deliberately for the transition from confidential discussions to public process. This shift should feel intentional, not reactive.

Review your community’s master plan to assess whether the proposed project aligns with adopted goals and land use designations before discussions progress. *See Master Planning for Industrial.*

Open Meetings Act (OMA) Compliance

While early coordination is vital, teams must be structured to comply with Michigan’s OMA:

- Sub-quorum strategy.** Ensure the number of elected officials from any single jurisdiction is less than a quorum (e.g., no more than 3 members of a 7-member board). This allows the group to act as an “advisory committee” rather than a “public body.”
- Advisory nature.** These early meetings should focus on fact-finding and evaluation rather than making final, binding decisions. All formal approvals must still occur during noticed public meetings.
- Avoid “serial quorums.”** Do not share deliberations from sub-quorum meetings with the remaining board members in a way that builds a “private consensus” before the public hearing.

FOIAs

1. Prevent FOIAs first.

FOIA exists so the public can access information it is legally entitled to. But in practice, FOIA requests often arrive not because information is being withheld, but because residents do not know who to ask, do not trust what they are hearing, or cannot find basic project information.

The most effective FOIA strategy is to reduce the conditions that trigger requests in the first place.

Give the project a face.

FOIA can feel like submitting a formal complaint to a blank government wall. A named staff point of contact reduces anonymity, builds trust, and provides a channel for questions before they escalate into formal records requests. Many potential FOIA requests are really just questions that nobody answered.

Practical steps that consistently reduce FOIA volume:

- Assign a single staff point of contact for public inquiries, with a designated backup.
- Require a single applicant or developer point of contact.
- Define roles at kickoff—who answers public questions, who manages document routing, who speaks for the applicant.
- Maintain a simple project page on the municipal website with status updates, key documents, and a timeline.
- Publish predictable updates that describe what you know, what you do not yet know, and what happens next.

Municipal counsel should weigh in early on how staff should engage with the public, particularly where confidentiality claims may arise.

2. FOIA Readiness

- Communities should not invent FOIA procedures mid-project. A visible, understandable process builds credibility before it is tested.
- Maintain a documented FOIA policy that describes timelines, routing procedures, fee schedules, and record retention requirements.
- Clearly identify a FOIA coordinator. This is typically the clerk, but may include counsel depending on the municipality's structure.
- Make the FOIA process easy to find on the municipal website, including how to submit requests and expected response timelines.
- Ensure that staff across departments understand the basics—what constitutes a public record, how requests are routed, and what the response obligations are.

Communities should avoid creating the perception that FOIA is the only path to project information. When FOIA becomes the primary communication channel, it signals a trust failure.

3. Know what becomes discoverable.

- Assume that project communications may become public. This is not a reason to avoid written communication, but it is a reason to keep communications professional, factual, and disciplined.
- Once information is in the hands of the planning commission or other public body, it is generally discoverable.
- Properly noticed closed sessions are permitted only for specific purposes under the OMA and should be guided by counsel.

- Consultants acting in a staff capacity—planning consultants, engineering firms, environmental consultants—may be subject to FOIA for project-related communications.
- Communications on personal devices and accounts may still be subject to FOIA if they relate to public business.
- OMA requirements should inform all meeting transparency practices, including the use of study sessions, work sessions, and subcommittee meetings.

4. When a FOIA Request Arrives

- When a request comes in, the response should be timely, neutral, and professional. The requester is exercising a legal right.
- Route the request immediately to the FOIA coordinator and municipal counsel.
- Counsel determines what qualifies for exemption, such as attorney–client privilege, trade secrets, or personal privacy, and what must be redacted versus released.
- Work with the requester to narrow overly broad requests when possible. A cooperative posture reduces conflict.
- Avoid “document dumps”—the practice of releasing massive volumes of unsorted material as a form of passive resistance. This escalates conflict and damages credibility.
- Maintain structured communication lanes throughout the process. A FOIA response should not contradict or undermine parallel public messaging.

Respond within the timelines required by statute. Extensions are permitted under the Act, but should be communicated clearly and used only when genuinely necessary.

Non-Disclosure Agreements (NDAs)

NDAs are intended to protect proprietary or market-sensitive information. In industrial development they can be appropriate, but only in limited circumstances. Municipalities operate within transparency laws, and NDAs do not override FOIA or Open Meetings Act requirements.

When NDAs Are Appropriate

NDAs are most appropriate in the following situations:

Early-stage conversations when a prospective user has not yet made a final site decision and premature disclosure could influence that decision.

When financial models, proprietary process information, or trade secrets are being shared for feasibility evaluation.

When premature disclosure could materially affect land pricing, competing bids, or the applicant's competitive positioning.

In these situations, an NDA provides structure and legal clarity while feasibility is being evaluated. It allows parties to share information that would not otherwise be exchanged.

Limitations in a Public Setting

NDAs have important limitations when a public body is a party:

They do not override FOIA. If a record is subject to disclosure under the Act, an NDA cannot prevent its release.

Information discussed in an open meeting cannot later be made confidential through an NDA.

Elected officials may have limited ability to be individually bound, and NDA obligations should not be interpreted as preventing officials from carrying out their public duties.

Overly broad NDAs create political risk and erode public trust. If residents learn that their elected officials signed a secrecy agreement, the narrative writes itself.

What a Well-Drafted NDA Should Include

Municipalities should work closely with legal counsel to ensure any NDA is narrowly tailored. At a minimum, the agreement should:

Clearly define what constitutes confidential information by category, not by blanket reference to "all project information."

Specify the duration of the confidentiality obligation, with a clear expiration date or triggering event.

Acknowledge that the municipality remains subject to FOIA and the OMA.

Avoid blanket language that attempts to cover the entire project or all communications between the parties.

Include a provision allowing the municipality to disclose information required by law, court order, or regulatory obligation.



The NDA as Boundary, Not Barrier

An NDA defines what cannot be shared. Equally important, it clarifies what can be shared. Even when the identity of a prospective developer or end user must remain confidential, staff can often communicate:

- The type of use being considered (manufacturing, distribution, data center) without naming the company.
- The stage of the evaluation process and what decisions remain.
- What approvals will be required and what the public's role will be.
- What standards, protections, and requirements apply under local ordinances.
- What the project is not, correcting misinformation without revealing confidential details.

Think of the NDA as a fence with a gate, not a wall. It defines where the boundary is so that everything outside it can be discussed freely. When paired with proactive messaging and clear communication protocols, NDAs can support orderly project evaluation without undermining public trust.

Common Mistakes to Avoid

The following errors appear frequently in industrial development projects across the region. Each one is avoidable with the practices described in this tool.

Mistake	Why it Matters
Signing overly broad NDAs without understanding scope	Creates legal exposure and political risk when the scope becomes public
Using an NDA as a blanket refusal to discuss process	Residents interpret silence as concealment, triggering opposition and FOIAs
Allowing inconsistent messaging across officials and staff	Contradictory statements destroy credibility faster than anything else
Failing to explain the approval process publicly	Residents assume decisions have already been made behind closed doors
Communicating sensitive information via text or personal email	Creates discoverable records outside of managed systems and complicates FOIA responses
Assuming that “no news” requires no update	Silence is never interpreted as neutral. People assume the worst when they hear nothing
Inventing FOIA procedures mid-project	Signals disorganization and invites suspicion about what is being hidden
Holding informal pre-meetings without documentation	Creates perception of backroom deals and may violate the OMA

Key Takeaway

FOIA, NDAs, and project communication are one system. Communities that establish clear information governance, assign points of contact, publish predictable updates, use NDAs narrowly, and maintain disciplined messaging can preserve transparency without letting the process devolve into crisis response.

The goal is not to eliminate FOIA requests or avoid NDAs entirely. The goal is to create conditions where FOIA is a backstop rather than the primary communication channel, where NDAs protect genuinely sensitive information rather than serving as a blanket for secrecy, and where the public has enough reliable information to engage constructively rather than adversarially.

The communities that manage industrial development most effectively are not the ones that control information the tightest. They are the ones that share the most, the earliest, through the clearest channels.



Further Reading

MML: Open Meetings Act
Freedom Of Information Act Handbook