



SPONSOR: Rep. Baumbach & Rep. Potter & Rep. Hudson &
Sen. Sokola & Sen. Bonini
Reps. Paradee, Ramone

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 75

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE FREEDOM OF INFORMATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 10003, Title 29 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 10003. Examination and copying of public records.

4 (a) All public records shall be open to inspection and copying during regular business hours by the custodian of the
5 records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not
6 be denied to any ~~citizen~~ person.

7 (m) Fees. — Unless otherwise set forth in the Delaware Code or any applicable code of a county or municipal
8 public body, the following fees shall apply to residents of this State:

9 (1) Photocopying fees. — In instances in which paper records are provided to the requesting party,
10 photocopying fees shall be as follows:

11 Standard-sized, black and white copies: The first 20 pages of standard-sized, black and white copies material
12 shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over
13 and above 20 shall be \$0.10 per sheet (\$0.20 for a double-sided sheet). This charge applies to copies on the following
14 standard paper sizes: 8.5" x 11", 8.5" x 14", and 11" x 17".

15 Oversized copies/printouts: The charge for copying oversized public records shall be as follows: 18" x 22",
16 \$2.00 per sheet; 24" x 36", \$3.00 per sheet; documents larger than 24" x 36", \$1.00 per square foot.

17 Color copies/printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or
18 printouts for standard-sized copies (8.5" x 11", 8.5" x 14", and 11" x 17") and \$1.50 per sheet for larger copies.

19 (2) Administrative fees. — Administrative fees shall be levied for requests requiring more than 1 hour of staff
20 time to process. Charges for administrative fees may include staff time associated with processing FOIA requests,
21 including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic

or print-outs). Administrative fees shall not include any cost associated with the public body's legal review of whether any portion of the requested records is exempt from FOIA. The public body shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonable required to process FOIA requests. In connection therewith, the public body shall minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.

Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.

Administrative fees will be billed to the requesting party per quarter hour. These charges will be billed at the current hourly pay grade (prorated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this section for copying fees.

When multiple FOIA requests are submitted by or on behalf of the requesting party in an effort to avoid incurring administrative charges, the public body may in its discretion aggregate staff time for all such requests when computing fees hereunder. Notwithstanding the foregoing, any Freedom of Information Act policy adopted by a public body pursuant to subsection (b) of this section hereunder may include provisions for the waiver of some or all of the above administrative fees; provided that such waiver shall apply equally to a particular class of persons (i.e., nonprofit organizations).

(3) Microfilm and/or microfiche printouts. — The first 20 pages of standard-sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

(4) Electronically generated records. — Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

(5) Payment. — The public body may require all or any portion of the fees due hereunder to be paid prior to any service being performed pursuant to this section.

(6) All state agencies and public bodies shall respond to requests made under subsection (f) of this section by persons who are not residents of this State under the rules and procedures established by this chapter. However, higher fees may be charged under this section when the request is from a person who is not a resident of this State and the fee schedule for requests from such persons is set forth in the policy enacted under subsection (b) of this section. Fees

charged under this paragraph must be approximate and reasonably reflect the costs necessary to defray the expenses of fulfilling it.

Section 2. Amend § 10004, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 10004. Open Meetings.

(b) A public body may call for an executive session closed to the public pursuant to subsections (c) and (e) of this section, but only for the following purposes:

(1) Discussion of an ~~individual citizen's~~ individual's qualifications to hold a job or pursue training unless the ~~citizen individual~~ requests that such a meeting be open. This provision shall not apply to the discussion by a licensing board or commission which is subject to the provisions of § 8735 of this title, of an ~~individual citizen's~~ individual's qualifications to pursue any profession or occupation for which a license must be issued by the public body in accordance with Delaware law;

(i) In an enforcement action pursuant to § 10005 of this title, a ~~citizen person~~ or the Attorney General, as the case may be, may seek the forfeiture of all or part of the compensation of members of a board, commission or other public body for any closed meeting which such board, commission or other public body closed knowing that such action violated this chapter. Such forfeiture may only be ordered by the Court if the Court makes a specific finding that the board, commission or public body had no good faith basis to believe that the meeting could be closed. It shall be an absolute defense that an individual never voted in favor of the closed meeting. If the board, commission or public body also met validity for other purposes on the same day as the meeting which violated the act, such valid action shall be considered by the Court in determining the extent of any forfeiture award.

(j) A person attending any meeting of a public body that is an open meeting under this section may make audio and video recordings of any portion of the open meeting so long as the act of making the recording is not disruptive.

Section 3. Amend § 10005, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 10005. Enforcement.

(a) Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any ~~citizen person~~ may challenge the validity under this chapter of any action of a public body by filing suit within ~~60~~ 90 days of the ~~citizen's person's~~ learning of such action but in no event later than ~~6 months~~ 2 years after the date of the action.

(b) Any ~~citizen person~~ denied access to public records as provided in this chapter may bring suit within 60 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent

jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Notwithstanding the foregoing, a person denied access to public records by an administrative office or officer, a department head, commission, or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in subsection (e) of this section. Thereafter, the petitioner or public body the Attorney General is otherwise obligated to represent may appeal an adverse decision on the record to the Superior Court within 60 days of the Attorney General's decision.

(c) In any action brought under this section, the burden of proof shall be on the custodian of records to justify the denial of access to records, and shall be on the public body to justify a decision to meet in executive session or any failure to comply with this chapter.

(d) Remedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief. The court may award attorney fees and costs to a successful plaintiff of any action brought under this section. The court may award attorney fees and costs to a successful defendant, but only if the court finds that the action was frivolous or was brought solely for the purpose of harassment.

(e) Any ~~citizen~~ person may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur. The petition shall set forth briefly the nature of the alleged violation. Upon receiving a petition, the Attorney General shall promptly determine whether the petition is against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title. Every petition against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title shall be referred to the Chief Deputy Attorney General who shall, within 20 days of receiving the petition, render a written determination to the petitioner and the public body involved declaring whether a violation has occurred or is about to occur. If the Chief Deputy finds that a violation of this chapter has occurred or is about to occur, the Attorney General shall not represent the public body in any appeal filed pursuant to this chapter for such violation if the public body the Attorney General is otherwise obligated to represent fails to comply with the Chief Deputy's determination. Regardless of the finding of the Chief Deputy, the petitioner or the public body may appeal the matter on the record to Superior Court. In every other case, the Attorney General shall, within 10 days, notify in writing the custodian of records or public body involved. Within 20 days of receiving the petition, the Attorney General shall make a written determination of whether a violation has occurred or is about to occur, and shall provide the ~~citizen~~ petitioner and any custodian of records or public body involved with a copy of the determination. If the Attorney General finds that a violation of this chapter has occurred

112 or is about occur, the ~~citizen~~ petitioner may: (1) File suit as set forth in this chapter; or (2) if a citizen of this State, request
113 in writing that the Attorney General file suit on the citizen's behalf. If such request is made, the Attorney General may file
114 suit, and shall within 15 days notify the ~~citizen~~ petitioner of the decision to file suit, unless the custodian of records or
115 public body has agreed to comply with this chapter. The ~~citizen~~ person shall have the absolute right to file suit regardless
116 of the determination of the Attorney General, and may move to intervene as a party in any suit filed by the Attorney
117 General.

118 (f) An administrative office or officer, agency, department, board, commission or instrumentality of state
119 government which the Attorney General is obligated to represent pursuant to § 2504 of this title shall not require the
120 approval of the Attorney General pursuant to § 2507 of this title to address claims of violation under this chapter.

SYNOPSIS

This Act requires that all public bodies that are subject to the requirements of the Freedom of Information Act ("FOIA") respond to requests for information from persons who are not residents of Delaware. In doing so, this Act does not change the purpose of FOIA, which is to further the accountability of State government to the citizens of this State, who, as taxpayers, are funding the work of the public bodies. As such, this Act allows state agencies and public bodies to create higher fees for responses to FOIA requests from persons who are not residents of Delaware. This Act also allows persons who are not residents of Delaware to challenge the validity of an action by a public body and extends the deadline by which to do so. It clarifies that a public body can go into executive session to discuss any individual's qualifications to hold a job or pursue training, not just to discuss the qualifications of a resident of Delaware.