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Sen. Lawson
Reps. Brady, Carson, Hudson, Kenton, Miro, M. Smith;
Sen. Hocker

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 378

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 10002, Title 29 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 10002. Definitions.

4 (a) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at
5 a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor
6 under § 10004(b) of this title.

7 (b) "Caucus" means members of the House of Representatives or Senate, of the same political party, who assemble
8 to discuss matters of public business.

9 (c) "FOIA" means the Freedom of Information Act [this chapter].

10 (d) "FOIA coordinator" shall mean the person designated by the Cabinet Secretary, school district superintendent,
11 local government head, Chair, or equivalent executive officer of the public body to receive and process FOIA requests.

12 (e) "FOIA request" or "request" means a request to inspect or copy public records pursuant to § 10003 of this title.

13 (f) "FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests
14 for public records may be made.

15 (g) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the
16 purpose of discussing or taking action on public business either in person or by video-conferencing.

17 (h) "Public body" means, unless specifically excluded, any regulatory, administrative, advisory, executive,
18 appointive or legislative body of the State, or of any political subdivision of the State, including, but not limited to, any
19 board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee,
20 advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity
21 or body established by an act of the General Assembly of the State, or established by any body established by the General

Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity, which:

(1) Is supported in whole or in part by any public funds; or

(2) Expends or disburses any public funds, including grants, gifts or other similar disbursements and distributions;

or

(3) Is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations.

"Public body" shall not include any caucus of the House of Representatives or Senate of the State. "Public body" shall include any authority created under Chapter 14 of Title 16.

(i) "Public body," "public record" and "meeting" shall not include activities of the University of Delaware and Delaware State University, except that the Board of Trustees of both universities shall be "public bodies," university documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees of either institution shall be a "meeting." Additionally, any university request for proposal, request for quotation, or other such document soliciting competitive bids for any contract, agreement, capital improvement, capital acquisition or other expenditure proposed to involve any amount or percentage of public funds by or on behalf of the university shall indicate on the request for proposal or other such document that it relates to the expenditure of public funds.

(j) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(k) "Public funds" are those funds derived from the State or any political subdivision of the State.

(l) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of the person's personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court;

(10) Subject to § 10004(f) of this title with respect to release of minutes of executive sessions, any record of discussions held in executive session pursuant to § 10004(b) and (c) of this title;

(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers;

(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used;

(13) Any records in the possession of the Department of Correction where disclosure is sought by an inmate in the Department's custody;

(14) Investigative files compiled or maintained by the Victims' Compensation Assistance Program;

(15) Any photographs, video recordings or audio recordings of a postmortem examination in the possession of the Division of Forensic Science;

(16) Emails received or sent by members of the Delaware General Assembly or their staff;

(17)a. The following records, which, if copied or inspected, could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual:

1. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures.

2. Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records of mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are used or stored, arenas, stadiums, waste and water systems, electric transmission lines and substations, high-pressure natural gas pipelines and compressor stations, and telecommunications networks facilities and switching equipment, the disclosure of which would reveal the building's or structure's internal layout, specific location, life, safety and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments. Records that disclose the substances being used or stored on a given piece of property are public records; however, records which disclose the specific location on that property of the substances being used or stored may be disclosed only if the chief administrative officer of the agency from which the record is requested determines that disclosure will not jeopardize the security of any structure owned by the State or any of its political subdivisions, or will not facilitate the planning of a terrorist attack, or will not endanger the life or physical safety of an individual.

3. Records of any building or structure operated by the State or any of its political subdivisions, the disclosure of which would reveal the building's or structure's life, safety and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments.

4. Records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained or regulated by the State or any of its political subdivisions.

5. Those portions of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety.

The only items that are protected from disclosure by this paragraph are:

A. Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments or to the response or deployment plans; and

B. Records not subject to public disclosure under federal law that are shared by federal or international agencies and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for criminal acts against United States citizens or targets.

6. Nothing in this subsection shall be deemed to prohibit the disclosure of information necessary to comply with the requirements of Chapter 8 of Title 26, the Underground Utility Damage Prevention and Safety Act.

7. Information technology (IT) infrastructure details, source code, logical and physical design of IT systems and interfaces, detailed hardware and software inventories, network architecture and schematics, vulnerability reports, and any other information that, if disclosed, could jeopardize the security or integrity of an information and technology system owned, operated or maintained by the State or any public body subject to the requirements of this chapter.

b. Nothing in this paragraph shall interfere with the right of any committee of the General Assembly to hear information in the committee at the request of the committee chair or, if appropriate, to hear information in an executive session of the committee, or to subpoena information pursuant to § 705 of this title;

(18)a. Any military service discharge document or documents, a discharge, separation notice, certificate of service, report of transfer or discharge, or any other notice or document which is evidence of severance or transfer from military service and which contains a service record from the armed forces of the United States, or any document that purports to represent a notice of separation from or service in any armed forces of the United States including but not limited to the United States Department of Defense, DD Form 214, of a veteran of the armed forces of the United States, which has been heretofore recorded at a county recorder of deeds. Such document or documents may only be disclosed in accordance with the provisions of paragraph (l)(17)b. of this section.

b. Access to authorized persons. — The following persons are permitted to view or reproduce recorded military service discharge documents:

1. The veteran subject of the discharge;
2. The spouse or child of a veteran, with consent of the veteran;

138 3. If the veteran is deceased, a survivor or heir of the veteran who may be eligible to claim any type
139 of benefit by virtue of the veteran's service in the military;

140 4. A person with a signed and notarized authorization from the veteran;

141 5. A county, state or federal officer assisting the veteran or veteran's family with a veteran's benefit
142 application;

143 6. Anyone authorized by an order from a Delaware court, to view or copy the document; or

144 7. Government agencies, including courts, that have an interest in assisting the veteran subject to the
145 military service discharge record or in assisting the beneficiaries of the deceased veteran subject to the
146 military service discharge record in obtaining a benefit.

147 c. Any document referenced in paragraph (1)(18)a. of this section shall be deemed a public record upon
148 the passage of 70 years from the date of the subject veteran's separation or discharge from service; or

149 (19) Any communications between a member of the General Assembly and that General Assembly member's
150 constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's
151 constituent, or communications between members of the General Assembly.

152 (m) "Requesting party" shall mean the person filing the FOIA request.

153 (n) "Video-conferencing" means any system permitting interaction among all participants in 2 or more noticed
154 public locations in compliance with § 10006 of this title.

155 (20) Personal identifying information including but not limited to address, electronic mail address, social media
156 accounts, telephone numbers, or any other personal contact information of all active duty members and immediate family
157 members of the Delaware State Police, county and municipal police officers, Delaware River and Bay Authority, University
158 of Delaware Police, and correctional officers. Nothing contained in this subsection shall prohibit the otherwise lawful
159 disclosure of the name of an active duty law enforcement officer.

SYNOPSIS

This bill is intended to protect the privacy of law enforcement officers and their immediate family members by specifically exempting their personal identifying information from FOIA. The disclosure of private information of law enforcement and their immediate family members unnecessarily endangers such individuals.