

CHAPTER 382
FORMERLY
SENATE BILL NO. 231
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

Section 1. Amend Title 29 Chapter 100 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike throughs, and by re-lettering accordingly, as follows:

§ 10002. Definitions.

(c) “FOIA” means the Freedom of Information Act.

(d) “FOIA Coordinator” shall mean the person designated by the Cabinet Secretary, school district superintendent, or local government head to receive and process FOIA requests.

(e) “FOIA Request” or “Request” means a request to inspect or copy public records pursuant to Section 10003 of this chapter .

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

(m) “Requesting Party” shall mean the person filing the FOIA request.

§ 10003. Examination and copying of public records.

(a) All public records shall be open to inspection and copying ~~by any citizen of the State~~ during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. ~~If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expediently as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.~~

~~(b) A custodian of a record for the appropriate public body who receives a request for a public record shall grant access to a public record or deny access to a record as soon as possible, but not later than 15 business days after receiving the request for a public record. The Department of Justice shall establish and provide a standard request form to public bodies for persons making requests pursuant to this chapter. Public bodies shall use this form exclusively and shall make it conveniently available for copying, completion, and/or submission via the internet, e-mail, U.S. mail or at the public body offices.~~

~~(c) Additional time shall be allowed beyond the 15 business days provided for in subsection (b) of this section when a request is for voluminous records, requires legal advice or a record is in storage or archived. In any of these cases, the requestor shall be advised by the custodian of a record, within 15 business days after the custodian of a record receives the request, stating the need for additional time. Such additional time provided for in this subsection shall be reasonable.~~

~~(d) It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records.~~

(b) All State agencies and public bodies shall implement and promulgate a policy for addressing requests made under the Freedom of Information Act.

(c) All State agencies and public bodies shall develop a web portal for receiving FOIA requests through the internet. Such portals shall utilize the standard request form promulgated by the Attorney General.

(d) All State agencies and public bodies are to provide reasonable assistance to the public in identifying and locating public records to which they are entitled access, and all records held by the agency are “public records” to which the public should have access unless they fall within the scope of enumerated exceptions in §10002.

(e) Form of Request

(1) All FOIA requests shall be made in writing to the public body in person, by e-mail, by fax, or online in accordance with the provisions hereunder. FOIA requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General provided, however, that any FOIA request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA request form may be obtained from the website of any state agency, school district, or other public body.

(2) All requests shall adequately describe the records sought in sufficient detail to enable the public body to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the public body in locating the requested records, the public body may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

(f) FOIA Coordinator

(1) Each public body shall designate a FOIA Coordinator who shall serve as the point of contact for FOIA requests and coordinate the public body's responses thereto. The FOIA Coordinator shall be identified on the public body's website. The FOIA Coordinator may designate other employees to perform specific duties and functions hereunder.

(2) The FOIA Coordinator and/or his or her designee, working in cooperation with other employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the public body in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the public body and the requesting Party.

(3) In addition to the foregoing responsibilities, the FOIA Coordinator shall maintain a document tracking all FOIA requests. For each FOIA request, the document shall include, at a minimum, the Requesting Party's contact information, the date the public body received the request, the public body's response deadline, the date of the public body's response (including the reasons for any extension), the names, contact information and dates of correspondence with individuals contacted in connection with requests, the dates of review by the public body, the names of individuals who conducted such reviews, whether documents were made available, the amount of copying and/or administrative fees assessed, and the date of final disposition.

(g) Response to Requests

(1) The public body shall respond to a FOIA request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records, denying access to the records or parts of them, or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the public body shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

(2) If the public body denies a request in whole or in part, the public body's response shall indicate the reasons for the denial. The public body shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

(h) Requests for E-mail

(1) Requests for e-mail records shall be fulfilled by the public body from its own records, if doing so can be accomplished by the public body with reasonable effort. If the public body determines that it cannot fulfill all or any portion of such request, the public body shall promptly request that its information and technology personnel or custodians provide the e-mail records to the public body.

(2) Before requesting the information and technology personnel or custodians to provide e-mail records, the public body shall provide an itemized written cost estimate 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.

(i) Requests for Other Non-Custodial Records

(1) If all or any portion of a FOIA request seeks records controlled by the public body but are not within its possession or cannot otherwise be fulfilled by the public body with reasonable effort from the records it possesses, then the public body shall promptly request that the relevant custodian provide the Non-Custodial Records to the public body.

(2) Before requesting any Non-Custodial Records, the public body shall provide an itemized written cost estimate 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.

(j) Review by Public Body

Prior to disclosure, records may be reviewed by the public body to ensure that those records or portions of records deemed non-public may be removed pursuant to §10002 or any other applicable provision of law. In reviewing the records, all documents shall be considered public records unless subject to one of the exceptions set forth in §10002 or any other applicable provision of law.

(k) Hours of Review

The public body shall provide reasonable access for reviewing public records during regular business hours.

(l) Fees

Unless otherwise set forth in the Delaware Code or any applicable Code of a county or municipal public body, the following fees shall apply:

(1) Photocopying Fees

In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

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

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

foot. Color copies/Printouts: an additional charge of \$1.00 per sheet will be assessed for all color copies or 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.

(2) Administrative Fees

Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA requests, 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 non-administrative 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 (pro-rated 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 §10003(b) 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., non-profit 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.

Approved August 01, 2012