



SPONSOR: Rep. Kowalko & Rep. Potter & Sen. Walsh
Reps. Baumbach, Jaques, Keeley, Lynn, Osienski,
Paradee, K. Williams

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 72

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:

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

3 § 10002. Definitions.

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

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

16 (20) Confidential letters and statements of recommendation placed in the records of educational agencies
17 or institutions respecting any of the following:

18 a. Admission to any educational agency or institution.

19 b. An application for employment or promotion.

20 c. Receipt of an honor or honorary recognition.

21 (21) Information of a proprietary nature produced or collected by or for faculty or staff of public
22 institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or

23 as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the
24 institution alone or in conjunction with a governmental body or a private concern, where such information has not
25 been publicly released, published, copyrighted or patented.

26 (22) Information maintained in connection with fundraising activities by or for a public institution of higher
27 education that would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or
28 (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment,
29 familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social
30 security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed
31 to authorize the withholding of information relating to the amount, date, purpose, and terms of the pledge or donation,
32 or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a
33 pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the
34 identities of sponsors providing grants to or contracting with the institution for the performance of research services or
35 other work or (ii) the terms and conditions of such grants or contracts.

SYNOPSIS

This Act would remove the broad exemption that the University of Delaware and Delaware State University currently receive under the state Freedom of Information Act. In recognition of the sensitive nature of some records held by public universities, this Act would also add some specific exemptions for public universities. Specifically, confidential letters or statements related to admission, employment or honors would not be a public record for purposes of FOIA. Universities would not be required to disclose scholarly research or information related thereto where such information is of a proprietary nature. Finally, certain information related to fundraising activities would be protected from disclosure. Delaware's FOIA, as currently written, already exempts personally identifiable student information protected by the federal Family Educational Rights and Privacy Act (FERPA).