



SPONSOR: Rep. Shupe & Sen. Pettyjohn
Reps. Briggs King, Collins, Lynn, Michael Smith,
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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 203

AN ACT TO AMEND TITLE 20 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE SUSPENSION OF THE DELAWARE FREEDOM OF INFORMATION ACT (FOIA).

1 WHEREAS, it is vital that Public Business be performed in an open and public manner so that our citizens shall
2 have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such
3 officials in formulating and executing public policy; and

4 WHEREAS, it is vital that citizens have easy access to public records in order that the society remain free and
5 democratic; and

6 WHEREAS the Delaware Freedom of Information Act grants Delaware citizens the proper tools to obtain such
7 access; and

8 WHEREAS, the Delaware Freedom of Information Act was temporarily suspended due to the Coronavirus; and

9 WHEREAS, due to the current pandemic, Delaware citizens have a more compelling interest than ever to be aware
10 of the workings of their duly elected officials.

11 NOW, THEREFORE:

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

13 Section 1. Amend § 3116(c), Title 20 of the Delaware Code by making deletions as shown by strike through and
14 insertions as shown by underline as follows:

15 § 3116. Powers.

16 (c) During an emergency or disaster:

17 (1) Nothing contained in this section shall be construed as granting the power to suspend or limit the right of
18 law abiding citizens to keep and bear arms for defense of self, family, home and State as guaranteed by article I, § 20
19 of the Delaware Constitution; and

20 (2) Nothing contained in this section shall prevent law-abiding citizens, during such emergency or disaster,
21 from taking reasonable steps to safeguard their arms from destruction, looting or theft, including but not limited to their
22 removal of such items from areas of danger to locations of relative safety.

23 (3) Nothing contained in this section shall be construed as granting the power to suspend or limit the right of
24 law abiding citizens to have access to public records under the Delaware Freedom of Information Act (Chapter 100 of
25 Title 29).

26 Section 2. Amend § 10003(h), Title 29 of the Delaware Code by making deletions as shown by strike through and
27 insertions as shown by underline as follows:

28 § 10003. Examination and copying of public records.

29 (h) *Response to requests.* — (1) The public body shall respond to a FOIA request as soon as possible, but in any
30 event within 15 business days after the receipt thereof, either by providing access to the requested records, denying access
31 to the records or parts of them, or by advising that additional time is needed because the request is for voluminous records,
32 requires legal advice, or a record is in storage or archived. If access cannot be provided within 15 business days, the public
33 body shall cite 1 of the reasons hereunder why more time is needed and provide a good-faith estimate of how much
34 additional time is required to fulfill the request. These reasons are the only circumstances in which the public body may
35 extend the time period for processing a FOIA request.

36 Section 3 Amend Chapter 100, Title 29 of the Delaware Code by adding thereto a new section to be designated as
37 §10008 to read as follows:

38 § 10008. State of Emergency

39 In the event of a State of Emergency being declared by the Governor, this Chapter shall not be suspended unless
40 the Governor may show, by clear and convincing evidence, that this Chapter shall in any way prevent, hinder, or delay
41 necessary action in coping with the emergency or disaster.

SYNOPSIS

This Act proposes to limit the Governor's abilities during a State of Emergency in regard to the Delaware Freedom of Information Act, exempting it from Title 20, Chapter 31.

This Act also ensures that the reasons outlined in Title 29, §10003 for the public body requesting an extension to a FOIA request is an exhaustive list.

This Act also adds Title 29, Chapter §10008, which states that the Governor may not suspend FOIA during a state of emergency without a showing that FOIA prevents, hinders, or delays the State's necessary actions in coping with the crisis at hand.