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Sens. Gay, Hansen, Hocker, Sokola, Walsh; Reps.
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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 246

AN ACT TO AMEND TITLE 18 AND TITLE 29 OF THE DELAWARE CODE RELATING TO INSPECTION OF
PUBLIC RECORDS.

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

1 Section 1. Amend Section 314, Title 18, of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 314. Records; inspection; destruction.

4 (a) The Commissioner shall carefully preserve in the Department and in permanent form all papers and records
5 relating to the business of the Department and shall hand the same over to the successor in office.

6 (b) ~~Except where the Commissioner deems the same to be prejudicial to the public interest, the~~ The Commissioner
7 shall permit inspection of the papers, ~~records~~ records, and filings in the Department by ~~persons found to have an identified~~
8 ~~and proper interest therein. in accordance with this State's Freedom of Information Act laws (Chapter 100 of Title 29).~~

9 (c) The Commissioner may destroy unneeded or obsolete records and filings in the Department in accordance
10 with provisions and procedures applicable to administrative agencies of this State in general.

11 (d) Nothing in this title shall prohibit the storage of documents and records by use of electronic means or media.

12 Section 2. Amend Section 10112, Title 29, of the Delaware Code by making deletions as shown by strike through
13 and insertions as shown by underline as follows:

14 ~~(a)~~ Each agency shall make available promptly to the public upon request, for inspection, originals or legible
15 copies of its public records in accordance with the State's Freedom of Information Act laws (Chapter 100 of Title 29). ~~the~~
16 ~~following:~~

17 ~~(1) Its regulations, orders, decisions, opinions and licenses;~~

18 ~~(2) Any documents, papers and other materials considered by the agency in taking agency action;~~

19 ~~or.~~

20 ~~(3) Any records of the agency reasonably specified by the requesting person.~~

21 ~~(b) When making its documents and other materials available to the public, the agency may:~~

22 (1) Take reasonable precautions to preserve the integrity and security of such documents or
23 materials;
24 (2) Make available only at reasonable, specified intervals documents and materials being actively
25 used by the agency;
26 (3) Limit the availability of information to its regular business hours and place of business;
27 (4) Decline to make available documents and other materials which:
28 a. Relate solely to the agency's internal procedural and personnel practices;
29 b. Pertain to ongoing enforcement investigations which have not yet resulted in agency
30 action;
31 c. Are specifically exempted from disclosure by law; or
32 d. Are confidential or privileged for the same or similar reasons as the Court would hold
33 its records confidential or privileged;
34 (5) Make a reasonable charge for the cost of reproducing or copying such documents or materials.
35 (e) The Court shall have jurisdiction of all actions to compel an agency to produce or disclose any documents,
36 materials or information and the agency shall have the burden of sustaining its refusal to produce or disclose as requested.

SYNOPSIS

Delaware's Freedom of Information Act ("FOIA") was intended to create a State-wide and generally applicable standard for citizens' access to public records and to further the accountability of government to the citizens of this State. To ensure consistency in the processing of requests for public records, and to ensure the goals of FOIA are being realized, this bill amends earlier-enacted provisions in the Delaware Insurance Code and Administrative Procedures Act related to public inspection of State agency documents to incorporate by reference the requirements of the later-enacted FOIA statute.

Author: Senator Mantzavinos