153rd GENERAL ASSEMBLY
FISCAL NOTE

BILL:	**SENATE BILL NO. 355**
SPONSOR:	**Senator Townsend**
DESCRIPTION:	**AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE FREEDOM OF INFORMATION ACT.**

Assumptions:

1. This Act is effective upon signature by the Governor.
2. This Act amends Title 29, Chapter 100 – Freedom of Information Act ("FOIA") by:
    a. Applying FOIA to the public generally and not just to Delaware residents. In effect, public bodies would no longer be able to deny FOIA requests based on a requestor not residing in Delaware. However, the Act allows a public body to charge higher administrative fees to a non-resident requestor.
    b. Including the Boards of Trustees of the University of Delaware and Delaware State University as public bodies under the provisions of this Chapter.
    c. Allowing for electronic correspondence received by a member of the General Assembly or a legislative employee to be considered public record if all parties waive the statutory exemption.
    d. Requiring the provision of a public record in its native file with some exception.
    e. Requiring the following to be published on a public body's website:
        i. A proposed or final order related to a case decision under subchapter III of Title 29, Chapter 101.
        ii. The public body's FOIA regulation.
        iii. Administrative staff manuals and memoranda that govern a public body's delivery of services or interactions with the public.
        iv. Public records that a public body determines are likely to become the subject of subsequent requests for the same records.
        v. A FOIA tracking log listing information about the nature, status and disposition of received FOIA requests. This log must be updated within 15 days of an activity.
    f. Reducing the time allowed to respond to a FOIA request from 15 days to 10 business days.
    g. Removes the current blanket exemption for investigatory files and would require a public body to explain the reasoning and potential harm for denying access.
    h. Allowing for the denial of a FOIA request if it is deemed unreasonably broad, unduly burdensome, intended to disrupt the essential functions of the public body, or is abusive. This provision is only effective if the public body can document the burden with specific facts.
    i. Allowing for fees to be charged for making redactions of any portion of a record exempt from disclosure, however, a public body may not include in fees charged any cost for reviewing or redacting a record that is incurred while resolving issues of law raised.
3. Information pertaining to the current FOIA workload and fiscal impact under the provisions of the Act was requested from a number of State agencies representing the majority of State operations. The following is the information received:

a. **General Assembly, Division of Legislative Services (DLS)** – DLS received a total of 69 FOIA requests in CY 2025 on behalf of the General Assembly. Of this number, 61 were received from in-state requestors. For CY 2026, 48 FOIA requests have been received, of which 31 were received from in-state requestors.

   i. DLS estimates the need for 1.0 FTE Legislative Attorney to accommodate the increased workload associated with the reduction in time to process a request, the change to require responses to out of state requests, and the waiver provisions for Legislative Communications.

   ii. DLS estimated operating costs for Fiscal Year 2028 are $168,783 and one-time costs of $7,970, and are as follows:
      1. $167,203 in additional personnel costs, including OECs at a rate of 33.86%.
      2. $1,580 in operational expenses for contractual services and supplies.
      3. $7,970 in one-time funding for technology equipment and furniture.

b. **Office of Management and Budget (OMB)** – OMB received a total of 175 FOIA requests in 2025 and has received 152 year to date in 2026.

   i. OMB anticipates the changes to out of state response requirements and shortened response deadline will lead to more demands on its FOIA coordination resources. OMB anticipates the need for 1.0 Paralegal II to accommodate these changes. In addition, OMB believes allowing lawsuits to be filed against State agencies absent a petition from the Department of Justice (DOJ) will likely result in an increased volume of lawsuits. Accordingly, the DOJ in their response anticipates additional Legal Fees would be required.

   ii. OMB estimated operating costs for Fiscal Year 2028 are $80,574 and one-time costs of $7,970, and are as follows:
      1. $78,994 in additional personnel costs, including OECs at a rate of 33.86%,
      2. $1,580 in operational expenses for contractual services and supplies.
      3. $7,970 in one-time funding for technology equipment and furniture.

   iii. Additional Legal Fees as suggested by the DOJ would amount to $500,000.

c. **Delaware Justice Information System (DELJIS)** – DELJIS received a total of 40 FOIA requests in CY 2025. For CY 2026, 50 FOIA requests have been received, of which 12 were received from in-state requestors.

   i. DELJIS anticipates additional staff time needed for records review, consultation, public postings on their website and administration of the revised requirements. DELJIS was unable to provide a reliable fiscal impact for this analysis.

d. **Delaware State Housing Authority (DSHA)** - DSHA received a total of 43 FOIA requests in 2025. For 2026, 41 FOIA requests have been received to date, of which 31 were received from in-state requestors and 10 were received from out of state requestors.

   i. DSHA anticipates the changes to out of state response requirements and shortened response deadline will increase the FOIA workload. As a separate authority, DSHA does not have State employees in their employee complement so funding comparable to a State FTE Paralegal is assumed.

   ii. DSHA estimated operating costs for Fiscal Year 2028 are $78,994 and one-time costs of $7,970, and are as follows:

      1. $78,994 in additional personnel costs, including OECs at a rate of 33.86%.

2. $7,970 in one-time funding for technology equipment and furniture.

e. **Delaware Department of Technology and Information (DTI)** – DTI receives its own FOIA requests and supports state agencies, school districts and some local governments in fulfilling FOIA requests for eRecords, the latter being the majority of FOIA requests that DTI processes. DTI received a total of 101 FOIA requests in 2025; of this amount 45 were DTI specific requests and 56 were requests for eRecords to fulfill requests made to partner agencies. DTI has received a total of 192 FOIA requests to date in 2026; of this amount 44 are DTI specific requests and 148 are for eRecords for partner agencies.

i. DTI anticipates the changes to out of state response requirements and shortened response deadline will increase the FOIA workload. DTI notes that many out of state requests are now being generated using Artificial Intelligence (AI) Tools. In preparing the cost estimate, DTI has also identified software solutions to accommodate additional electronic data subject to retrieval such as text messages, instant messages, video conferencing, etc.

ii. DTI estimates the need for 2.0 FTE Telecommunications Technologists to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out of state requests and the increased scope of electronic requests.

iii. DTI estimated operating costs for Fiscal Year 2028 are $1,734,387 and one-time costs of $15,940, and are as follows:

1. $276,227 in additional personnel costs, including OECs at a rate of 33.86%.
2. $1,458,160 in operational expenses for contractual services, and technology expenses for EDiscovery licensing, case management software, search tools, OCR production tools and additional storage capacity.
3. $15,940 in one-time funding for technology equipment and furniture

f. **Department of Insurance (DOI) -** DOI received a total of 101 FOIA requests in 2025, of which 38 were from in-state requestors and 63 were received from out-of-state requestors. For 2026, 120 FOIA requests have been received to date, of which 76 were received from in-state requestors and 44 were received from out of state requestors. DOI also denied 8 requests in 2025 under the investigatory files exemption and 5 in 2026.

i. DOI estimates the need for 1.0 ASF FTE Paralegal III to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

ii. DOI estimated operating costs for Fiscal Year 2028 are $80,574 ASF and one-time costs of $7,970 ASF, and are as follows:

1. $78,994 ASF in additional personnel costs, including OECs at a rate of 33.86%.
2. $1,580 ASF in operational expenses for contractual services and supplies.
3. $7,970 ASF in one-time funding for technology equipment and furniture.

g. **Department of Justice (DOJ) -** DOJ received a total of 163 FOIA requests in 2025, of which 140 were from in-state requestors and 23 were received from out of state requestors. For 2026, 190 FOIA requests have been received to date, of which 154 were received from in-state requestors and 36 were received from out of state requestors. DOJ denied 26 requests in 2025 and 21 requests to date in 2026 under the investigatory files exemption. DOJ estimates that removing the out of state and investigatory exemptions will increase the number of FOIA requests by 30%. DOJ did not provide a specific fiscal

impact for their organization but suggested a $500,000 increase in the OMB Legal Fees appropriation.

h. **Department of Human Resources (DHR) –** DHR reports an average of 65 FOIA requests received annually, of which approximately one half denied due to non-residency.

   i. DHR estimates the need for 1.0 FTE Administrative Management to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

   ii. DHR estimated operating costs for Fiscal Year 2028 are $96,623 and one-time costs of $7,970, and are as follows:
      1. $95,043 in additional personnel costs, including OECs at a rate of 33.86%.
      2. $1,580 in operational expenses for contractual services and supplies.
      3. $7,970 in one-time funding for technology equipment and furniture.

i. **Department of State (DOS)** - DOS received a total of 428 FOIA requests in 2025. For 2026, 336 FOIA requests have been received to date, of which 270 were received from in-state requestors and 66 were received from out of state requestors. DOS notes a significant number of out of state FOIAs are received by the Division of Corporations.

   i. DOS estimates the need for 5.0 FTE Administrative Management and 2.0 ASF FTE Administrative Management to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

   ii. DOS estimated operating costs for Fiscal Year 2028 are $483,113 and $234,396 ASF and one-time costs of $39,850 and $15,940 ASF, and are as follows:
      1. $475,213 and $231,236 ASF in additional personnel costs, including OECs at a rate of 33.86%.
      2. $7,900 and $3,160 ASF in operational expenses for contractual services and supplies.
      3. $39,850 and $15,940 ASF in one-time funding for technology equipment and furniture.

j. **Department of Finance (DOF)** - DOF received a total of 89 FOIA requests in 2025. For 2026, 131 FOIA requests have been received to date, of which 62 were received from in-state requestors and 69 were received from out of state requestors. DOF notes a number of out-of-state requests are from data gathering agencies.

   i. DOF estimates the need for 1.0 FTE Management Analyst, 1.0 FTE Deputy Attorney General III, 1.0 FTE Paralegal and 1.0 FTE Administrative Specialist to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

   ii. DOF estimated operating costs for Fiscal Year 2028 are $435,697 and one-time costs of $31,880, and are as follows:
      1. $429,377 in additional personnel costs, including OECs at a rate of 33.86%.
      2. $6,320 in operational expenses for contractual services and supplies.
      3. $31,880 in one-time funding for technology equipment and furniture.

k. **Department of Health and Social Services (DHSS)** – DHSS notes that FOIA request volume has grown 46% since 2024. DHSS received a total of 542 FOIA requests in 2025.

For 2026, 577 FOIA requests have been received through the end of September, 487 of these were tracked through the Department's FOIA software. Of the 487 tracked, 193 were received from in-state requestors and 294 were received from out-of-state requestors.

i. DHSS estimates the need for 6.0 FTE Management Analyst to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

ii. DHSS estimated operating costs for Fiscal Year 2028 are $531,606 and one-time costs of $47,820, and are as follows:
   1. $519,126 in additional personnel costs, including OECs at a rate of 33.86%.
   2. $12,480 in operational expenses for contractual services and supplies.
   3. $47,820 in one-time funding for technology equipment and furniture.

l. **Department of Services for Children, Youth and Their Families (DSCYTF)** - DSCYTF received a total of 66 FOIA requests in FY 2026, of which 34 were from out of state requestors. For FY 2027, 23 FOIA requests have been received to date, of which 12 were received from in-state requestors and 11 were received from out of state requestors.

i. DSCYTF estimates the need for 1.0 Casual/Seasonal Administrative Management to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

ii. DSCYTF estimated operating costs for Fiscal Year 2028 are $58,849 and one-time costs of $7,970, and are as follows:
   1. $57,269 in additional personnel costs, including OECs at a rate of 9.05%.
   2. $1,580 in operational expenses for contractual services and supplies.
   3. $7,970 in one-time funding for technology equipment and furniture.

m. **Department of Correction (DOC)** - DOC received a total of 105 FOIA requests in 2025, of which 80 were received from in state requestors and 35 were received from out of state requestors. For 2026, 106 FOIA requests have been received to date, of which 91 were received from in-state requestors and 15 were received from out of state requestors. The DOC estimates less than 10% of requests were denied under the investigatory exemption.

i. DOC estimates the need for 1.0 FTE Paralegal III and 1.0 FTE Deputy Attorney General III to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

ii. DOC estimated operating costs for Fiscal Year 2028 are $260,471 and one-time costs of $15,940, and are as follows:
   1. $257,311 in additional personnel costs, including OECs at a rate of 33.86%.
   2. $3,160 in operational expenses for contractual services and supplies.
   3. $15,940 in one-time funding for technology equipment and furniture.

n. **Department of Natural Resources and Environmental Control (DNREC)** - DNREC received a total of 1,006 FOIA requests in 2025. For 2026, 1,062 FOIA requests have been received to date, of which 356 were received from in-state requestors and 706 were received from out of state requestors. Also, for 2026, DNREC reports that 17 requests were denied under the investigatory exemption and 11 were denied pursuant to the pending or potential litigation exemption.

i. DNREC estimates the need for 3.0 FTE Paralegal III and 2.0 FTE Paralegal II, 2.0 FTE Planner II and 2.0 FTE Administrative Specialist to accommodate the increased workload associated with the reduction in time to process a request, the requirement to respond to responses to out-of-state requests and the changes to investigatory and litigation exemptions to require explanations of fact to withhold records.

ii. DNREC estimated operating costs for Fiscal Year 2028 are $743,456 and one-time costs of $71,730, and are as follows:
1. $729,236 in additional personnel costs, including OECs at a rate of 33.86%.
2. $14,220 in operational expenses for contractual services and supplies.
3. $71,730 in one-time funding for technology equipment and furniture.

o. **Department of Safety and Homeland Security (DSHS)** - DSHS received a total of 595 FOIA requests in 2024 and 1010 in 2025. For 2026 (through July 2026), 1049 FOIA requests have been received. DSHS estimates that more than half of these requests were received from out-of-state requestors. Police reports and investigative files are estimated to comprise one quarter of requests received.

i. DSHS estimates the need for 2.0 FTE Paralegal III to accommodate the increased workload associated with the reduction in time to process a request, the requirement to respond to responses to out-of-state requests and the changes to investigatory and litigation exemptions requiring explanations of fact to withhold records.

ii. DSHS estimated operating costs for Fiscal Year 2028 are $176,202 and one-time costs of $15,940, and are as follows:
1. $173,042 in additional personnel costs, including OECs at a rate of 33.86%.
2. $3,160 in operational expenses for contractual services and supplies.
3. $15,940 in one-time funding for technology equipment and furniture.

p. **Department of Transportation (DelDOT)** – DelDOT received a total of 430 FOIA requests in 2025 of which 339 were from in state requestors and 71 were from out of state requestors. For 2026 year to date, 487 FOIA requests have been received of which 350 were from in state requestors and 107 were from out of state requestors. Many of these requests are associated with electronic enforcement programs and are currently subject to investigation and litigation exceptions.

i. DelDOT estimates the need for 1.0 TFO FTE Paralegal III, 1.0 TFO FTE Deputy Attorney General V, 1.0 TFO FTE Administrative Management and 1.0 TFO FTE Legal Services Administrator to accommodate the increased workload associated with the reduction in time to process a request, the requirement to respond to responses to out-of-state requests and the changes to investigatory and litigation exemptions requiring explanations of fact to withhold records.

ii. DelDOT estimated operating costs for Fiscal Year 2028 are $263,631 TFO and one-time costs of $31,880 TFO, and are as follows:
1. $257,311 TFO in additional personnel costs, including OECs at a rate of 33.86%.
2. $6,320 TFO in operational expenses for contractual services and supplies.
3. $31,880 TFO in one-time funding for technology equipment and furniture.

q. **Department of Labor (DOL)** - DOL received 100 FOIA requests in 2025. For 2026 to date, 124 FOIA requests have been received, of which 82 were received from in state requestors and 42 received from out-of-state requestors.

i. DOL estimates the need for 2.0 FTE Paralegal II and 5.0 FTE Paralegal III to accommodate the increased workload associated with the reduction in time to process a request and the requirement to respond to responses to out-of-state requests.

ii. DOL estimated operating costs for Fiscal Year 2028 are $601,654 and one-time costs of $55,790, and are as follows:
1. $590,594 in additional personnel costs, including OECs at a rate of 33.86%.
2. $11,060 in operational expenses for contractual services and supplies.
3. $55,790 in one-time funding for technology equipment and furniture.

r. **Department of Agriculture (DOA)** - DOA received 65 FOIA requests in 2026 to date, of which 18 were received from in state requestors and 47 received from out-of-state requestors.

i. DOA estimates the need for 1.0 FTE Paralegal III to accommodate the increased workload associated with the reduction in time to process a request and the requirement to respond to responses to out-of-state requests.

ii. DOA estimated operating costs for Fiscal Year 2028 are $88,101 and one-time costs of $7,970, and are as follows:
1. $86,521 in additional personnel costs, including OECs at a rate of 33.86%.
2. $1,580 in operational expenses for contractual services and supplies.
3. $7,970 in one-time funding for technology equipment and furniture.

s. **Department of Education (DOE)** – DOE estimates approximately 250 FOIA requests received each year. Of this number, approximately 70% are received from out-of-state requestors. DOE notes that recent experience has been that FOIA requests received have been more complex, in part because of the use of AI in preparing requests.

Three school districts, representing a cross-section of districts were asked to provide FOIA data. The Colonial School District received 20 FOIA requests in 2025 and 51 in 2026; the Seaford School District received 20 FOIA requests in 2025 and 36 in 2026; and the Ceasar Rodney School District received 46 FOIA requests in the 2025/2026 school year and 12 so far in the current school year.

i. DOE estimates the need for 1.0 FTE Education Associate and 1.0 FTE Deputy Attorney General III to accommodate the increased workload associated with the reduction in time to process a request and the requirement to respond to responses to out-of-state requests.

ii. DOE estimated operating costs for Fiscal Year 2028 are $260,471 and one-time costs of $15,940, and are as follows:
1. $257,311 in additional personnel costs, including OECs at a rate of 33.86%.
2. $3,160 in operational expenses for contractual services and supplies.
3. $15,940 in one-time funding for technology equipment and furniture.

t. **Delaware Technical Community College (DTCC)** -For 2026 to date, 29 FOIA requests have been received, of which 12 were received from in state requestors and 17 received from out-of-state requestors.

i. DTCC estimates the need for 1.0 FTE Paralegal III to accommodate the increased workload associated with the reduction in time to process a request, and the change to require responses to out-of-state requests.

ii. DTCC estimated operating costs for Fiscal Year 2028 are $88,101 and one-time costs of $7,970, and are as follows:
   1. $86,521 in additional personnel costs, including OECs at a rate of 33.86%.
   2. $1,580 in operational expenses for contractual services and supplies.
   3. $7,970 in one-time funding for technology equipment and furniture.

4. A 2% inflation cost has been included to account for projected salary and OEC increases in Fiscal Years 2029 and 2030.

Cost:

	Operating	**One-Time**	**ASF**	**TFO**
Fiscal Year 2028	$6,387,083	$366,620	$338,881	$295,511
Fiscal Year 2029	$6,524,243		$321,175	$268,777
Fiscal Year 2030	$6,613,145		$327,504	$274,026

Prepared by Robert Scoglietti
Office of the Controller General