

CITY OF DOVER
FREEDOM OF INFORMATION ACT POLICY - PUBLIC RECORDS ACCESS

SECTION 1 - PURPOSE

The purpose of this policy is to prescribe procedures relating to the inspection and copying of public records retained by the City of Dover (“the City”) pursuant to 29 Del. C. Chapter 100, the State of Delaware Freedom of Information Act (FOIA). It is the City’s goal in establishing this policy to maximize the amount of information available to the public, establish a reasonable fee structure for providing public records, and to streamline procedures used to disseminate this information. 29 Del. C. §10003 reads as follows:

“(a) All public records shall be open to inspection and copying 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. (b) All state agencies and public bodies shall implement and promulgate a policy for addressing requests made under the Freedom of Information Act.”

This policy applies to the City in dealing with requests from the public for information as set forth in the FOIA. It does not apply to the City in its normal course of business with Federal, State, or local agencies, nor to private parties with whom the City is conducting business, provided the public records are germane to the business being conducted.

It is the intent of the City that public business be performed in an open and public manner so that the citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy, and so that citizens have easy access to public records in order that the society remain free and democratic. It is the policy of the City that all employees shall comply with FOIA and all requests for information shall be processed in the manner prescribed below.

SECTION 2 - DEFINITIONS

“*City*” - the City of Dover.

“*Department*” - a department of the City of Dover.

“*Exempt*” - information determined by the FOIA Coordinator and/or City Solicitor to constitute a record that shall not be deemed public in accordance with 29 Del. C. 10002(l).

“*FOIA*” - 29 Del. C. Chapter 100, the State of Delaware Freedom of Information Act.

“*FOIA Coordinator*” - the City Clerk for the City of Dover or his/her designee.

“*FOIA request*” or “*request*” - a request to inspect or copy public records pursuant to 29 Del. C. §10003.

“*FOIA Request Form*” - the City of Dover FOIA Request Form or the form promulgated by the State of Delaware Office of the Attorney General upon which requests for public records may be made.

“*Public record*” - information of any kind that is owned, made, used, retained, received, produced, composed, drafted, or otherwise compiled or collected by any public body, relating in any way to public business, or in any

way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded, or reproduced, except those records deemed not public under 29 Del. C. §10002(1).

“Requesting party/requestor” - any individual, organization, or business that submits a request for information under the Delaware Freedom of Information Act.

SECTION 3 - AVAILABILITY OF RECORDS

3.1) Access

- (A) The City will provide reasonable assistance to the public in identifying and locating public records to which they are entitled access.
- (B) The City will provide reasonable access and facilities for reviewing public records during regular business hours and for copying of records by City staff.
- (C) The City shall make all requested records available for review by requestor unless such records or portions of records are determined by the FOIA Coordinator and/or City Solicitor to be exempt pursuant to 29 Del. C. §10002(1).
- (D) If all or any portion of a FOIA request seeks records controlled by the City but not within its possession, or if the request cannot otherwise be fulfilled by the City with reasonable effort from the records it possesses, the City shall promptly request that the relevant custodian provide the noncustodial records to the public body.
- (E) If a requesting party wants to review original materials, a staff member shall be assigned to monitor the review to ensure that the integrity of all materials is maintained. A monitor may be required at other times at the discretion of the FOIA Coordinator or designee.
- (F) In providing access to public records, the FOIA Coordinator may take necessary and reasonable action to protect the City’s public records and to prevent excessive and unreasonable interference with the discharge of the City’s functions. This policy does not require the City to make a compilation, summary, or report of information, or otherwise create a document that did not previously exist.

3.2) City Records Review

- (A) The FOIA Coordinator will serve as the point of contact for FOIA requests and coordinate the City’s responses. The FOIA Coordinator may designate other employees to perform specific duties and functions hereunder. The FOIA Coordinator will be identified on the City’s website. All FOIA requests received by any City department will be immediately directed to the FOIA Coordinator. The FOIA Coordinator, 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 City in locating and providing the requested records. The FOIA Coordinator will also work to foster cooperation between the City and the requesting party.

- (B) The FOIA Coordinator will maintain a tracking document for all FOIA requests. For each FOIA request, the document shall include the requesting party's contact information, the date the request was received; the City's response deadline; the date of the City'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 City; the names of individuals who conducted such reviews; whether the documents were made available (and, if not, the reasons for denial in whole or in part); the amount of administrative and/or production fees assessed; and the date of final disposition.
- (C) All FOIA requests will be evaluated by the FOIA Coordinator to determine, in consultation with the City Solicitor if necessary, whether the records requested are considered to be public records as defined in 29 Del. C. §10002(1). Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed non-public are removed pursuant to 29 Del. C. §10002 or any other applicable provision of law. In reviewing the records, all documents shall be considered public records unless subject to one (1) of the exceptions set forth in 29 Del. C. §10002(1) or any other applicable provision of law.
- (D) City brochures, pamphlets, informational bulletins, and other such information are not subject to this policy.

SECTION 4 - REQUESTS FOR PUBLIC RECORDS

4.1) Method of Request

- (A) The City shall develop and maintain a web portal for receiving FOIA requests through the internet. The portal shall utilize the City of Dover FOIA Request Form, which shall be based on the standard request form promulgated by the State of Delaware Office of the Attorney General, and copies of the FOIA request form may be obtained from the City of Dover website.
- (B) Requests for access to records shall be made in writing and may be presented in person, by e-mail, by fax, or online. FOIA requests may be submitted using the City of Dover FOIA Request Form or the form promulgated by the State of Delaware Office of the Attorney General; however, any FOIA request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the City's or State of Delaware Attorney General's promulgated form.
- (C) Requests for access to records shall adequately describe the record sought in sufficient detail to enable the City to locate the record with reasonable effort. The requesting party shall be as specific as possible when requesting records. The City may request that the requesting party provide additional information known to the requesting party, such as the type of records, dates, parties to correspondence, and subject matter of the requested records.

4.2) Response to Requests

- (A) The City shall respond to FOIA requests as soon as possible, but in any event within 15 business days after the receipt, either by providing access to the requested records, denying access for 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 15 business days, the City shall cite one (1) of the reasons why more time is needed and provide a good faith estimate of how much additional time is required to fulfill the request.
- (B) If the City denies a request in whole or in part, the City's response shall indicate the reasons for the denial. The City shall not be required to provide an index, or any other compilation, as to each record or part of a record denied. If a FOIA request is denied, the requestor may seek recourse in accordance with 29 Del. C. §10005.

SECTION 5 - FEES FOR RESPONDING TO FOIA REQUESTS

Fee assessment and payment procedures related to FOIA requests shall be as follows:

5.1) Production Fees

- (A) Production fees for providing public records shall be assessed in accordance with Appendix F - Fees and Fines, Chapter 52. Freedom of Information Act Related to Public Records Access.
- (B) The City shall have discretion based on circumstances involved to make decisions regarding copying.
- (C) If the City does not have the resources or equipment to duplicate requested records, the City, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the requestor will be liable for payment of these costs.
- (D) Other Costs
Any other actual costs associated with fulfilling a request for information, such as postage, shall be at the expense of the requestor.

5.2) Administrative Fees

- (A) Administrative fees for providing public records shall be assessed in accordance with Appendix F - Fees and Fines, Chapter 52. Freedom of Information Act Related to Public Records Access.
- (B) Administrative fees shall be levied for requests requiring more than 30 minutes of staff time to process and will be billed to the requesting party per quarter hour. These charges will be incurred for all staff time expended in excess of 30 minutes at the current hourly pay grade plus overhead rate

(prorated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges for production.

- (C) 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).
- (D) Administrative fees shall not include any cost associated with the City's legal review or determining whether any portion of the requested records is exempt from FOIA.
- (E) When multiple FOIA requests are submitted by or on behalf of the requesting party in an effort to avoid incurring administrative charges, the City may, at its discretion, aggregate staff time for all such requests when computing fees.
- (F) The City will make every effort to ensure that administrative fees are minimized and will only assess such charges as shall be reasonably required to process FOIA requests. The City shall minimize the use of non-administrative personnel in processing FOIA requests to the extent possible.

5.3) Estimate

Prior to fulfilling any request that would require a requesting party to incur production and/or administrative fees, the public body will provide a 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. After receipt of payment by the City, the information requested will be retrieved and released to the requestor.

5.4) Waiver of Fees

The FOIA Coordinator or designee shall have the authority to determine if a fee for a FOIA request shall be waived and the following criteria shall be used to render such a decision:

- (A) The public record is already available in duplicate form (extra copies);
- (B) The request for public record is made by an individual who is entitled to information under the FOIA and who submits an affidavit, provided by the City upon request, which shall state that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigence. A person shall be considered indigent if that person's income level is at or below the federal poverty level, as established by the Bureau of the Census.
- (C) Fees for printing the first 10 standard-sized black and white or the first five (5) standard-sized color single-sided copies shall be waived.

No written request will be required or charges levied for requests to review specific documents which are required by ordinance to be made available to the public by the City Clerk.

5.5) Payment

Payment of fees related to FOIA requests will be due prior to any related service being performed. Full payment of all final costs incurred must be received prior to the retrieval and release of information.

AMENDED BY COUNCIL ON APRIL 14, 2014.

AMENDED BY COUNCIL ON NOVEMBER 28, 2005.

ADOPTED BY COUNCIL ON JANUARY 13, 2003.

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