

CITY OF WILMINGTON POLICY FOR FREEDOM OF INFORMATION ACT REQUESTS FOR PUBLIC RECORDS

Purpose

This Policy states the procedures the City follows for responding to requests for public records under the State of Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). The City will produce requested Public Records in accordance with FOIA. Documents and information within documents may be withheld to the extent any of FOIA’s Public Record exceptions applies. FOIA’s exceptions will be construed consistent with FOIA’s policy intent that public business be performed in an open and public manner. It is the City’s policy that City Departments and Offices shall comply with FOIA and all requests for Public Records under FOIA shall be processed in the manner outlined below.

Definitions

The following terms as used in this policy have the following meaning:

“City” – The Executive and Legislative Branches of the City of Wilmington government.

“Department” – Departments or Offices of the City of Wilmington government.

“Exception” – Is a Non-Public Record that is exempt from disclosure under 29 *Del. C.* § 10002(l)(1)-(19).

“FOIA” – Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007.

“FOIA Coordinator” – The City employee designated by the Department or Office head to receive and process FOIA requests.

“FOIA Request” or “Request” – A request to inspect or copy public records made pursuant to 29 *Del. C.* § 10003.

“FOIA Request Form” – The form promulgated by the City upon which requests for public records may be made, available on the City’s website.

“Non-Custodial Public Records” – City Public Records that are not within the City’s possession, because such records are archived or in off-site storage.

“Public Record” – Shall have the meaning set forth in 29 *Del. C.* § 10002(l).

“Requesting Party” – A party filing a FOIA request.

Request for Public Records

Form of Request -- All FOIA Requests shall be made in writing to the appropriate Department FOIA Coordinator in person, by email, by fax or online. FOIA Requests are to be submitted using the City’s FOIA Request Form. However, a Request containing the required information and which otherwise conforms with this policy shall not be denied solely because the Request is not on the City’s FOIA Request Form.

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All Requests shall adequately describe the Public Record(s) sought with enough specificity to enable the Department to locate the record(s) with reasonable effort. To assist the Department in locating the requested Public Record(s), the Department may ask the Requesting Party to provide additional information known to the Requesting Party, such as dates, types of records, subject matter of requested document(s), and parties to correspondence. If the Requesting Party does not respond to the FOIA Coordinator within fifteen (15) days, the FOIA Coordinator shall re-contact the Requesting Party. If the Requesting Party does not respond to the FOIA Coordinator’s second contact, the FOIA Coordinator shall close the Request and send a final email to the Requesting Party indicating that the Request has been closed.

Filing of Request – FOIA Requests shall be made by mail, email, fax, online, or in person to the Department’s FOIA Coordinator who is identified on the City’s website. FOIA Request Forms may be obtained from the City’s website, from the Department, or by contacting the City in person.

FOIA Coordinator – Each Department head shall designate a FOIA Coordinator and back up for his or her Department. The FOIA Coordinator shall serve as the point of contact for FOIA Requests and coordinate the Department’s responses. The FOIA Coordinator shall work with his or her Department co-workers and shall make every reasonable effort to assist the Requesting Party in identifying the Public Records being sought, and to assist the Department in locating the requested Public Records. The FOIA Coordinator will also work to foster cooperation between the Department and the Requesting Party. If the Requesting Party submits a FOIA Request that would more appropriately be directed to another Department, the FOIA Coordinator shall promptly forward the request to the appropriate Department and notify the Requesting Party that the request was so forwarded and provide the appropriate Department FOIA Coordinator’s name and contact information. Upon written confirmation of receipt of the forwarded request from the appropriate Department’s FOIA Coordinator, the initial receiving Department shall close the initial Request. However, the receiving FOIA Coordinator must still respond to the FOIA Request within fifteen (15) business days after the initial receipt thereof, as described in the next section.

The FOIA Coordinator shall maintain a record tracking all FOIA Requests by calendar year. For each FOIA Request, the document or database shall include, at a minimum: the Requesting Party’s contact information; the date the Department received the Request; the Department’s response deadline; the date of the Department’s response (including reasons for any extension); the names, contact information and dates of correspondence with individuals contacted in connection with the Request; the dates of review by the Department and the names of the individuals that conducted such reviews; whether documents were made available; the amount of any administrative or copying fees assessed; and the date of final disposition.

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Department Response to Requests – The Department shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by: 1) providing access to the requested Public Records; 2) denying access to the requested Public Records or parts of the requested Public Records; 3) or by advising the Requesting Party that additional time is needed because the request i) is for voluminous records, ii) requires legal review, or iii) a Public Record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Department shall cite one of the above reasons as to why more time is needed and provide a good-faith estimate of how much additional time is needed to fulfill the FOIA Request.

If the Department denies a FOIA Request in whole or in part, the Department’s response shall indicate the reasons for denial specifically referencing one or more of the Exceptions, if applicable. The Department shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

Public Records requested may be picked up by the Requesting Party at the Department’s front desk, emailed (if available electronically), or faxed to the Requesting Party. If the Requesting Party requests that the Public Records be mailed via Postal Service, the Requesting Party shall be responsible for the cost of mailing.

Requests for Emails – Request for email records shall be fulfilled by the Department from its own records, if the Department can do so with reasonable effort. If the Department determines it cannot fulfill all or any portion of the FOIA Request, it shall promptly request the Office of Information Technology provide email records to the Department. If the Office of Information Technology determines that it cannot fulfill the FOIA request with reasonable effort, the Department in conjunction with the Office of Information Technology may contact a third-party service provider to assist in fulfilling the FOIA Request. Before engaging the third-party service provider, the Department shall provide an itemized written cost estimate 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. If the Requesting Party does not respond to the FOIA Coordinator within fifteen (15) days, the FOIA Coordinator shall re-contact the Requesting Party. If the Requesting Party does not respond to the FOIA Coordinator’s second contact, the FOIA Coordinator shall close the Request and send a final email to the Requesting Party indicating that the Request has been closed.

Requests for Non-Custodial Public Records – If all or any portion of a FOIA request seeks Public Records controlled by the City, but are not within the Department’s possession or cannot otherwise be fulfilled with reasonable effort from the Public Records in the Department’s possession because the Public Records are archived or in off-site storage, then the Department shall promptly ask that the relevant keeper of archived or stored records to provide the Non-custodial Public Records to the Department.

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Before retrieving any Non-custodial Public Records, the Department shall provide an itemized written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such Public Records. Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the Request. If the Requesting Party does not respond to the FOIA Coordinator within fifteen (15) days, the FOIA Coordinator shall re-contact the Requesting Party. If the Requesting Party does not respond to the FOIA Coordinator’s second contact, the FOIA Coordinator shall close the Request and send a final email to the Requesting Party indicating that the Request has been closed.

Review by Department and Legal Review – Prior to disclosure, records are to be reviewed by the responding Department and by the Law Department to ensure the records or portions of the records deemed to be Non-Public Records may be removed pursuant to 29 Del. C. §10002(l)(1)-(19) or any other applicable provision of law. In reviewing records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del. C. §10002(l) or any other applicable provision of law. Nothing herein shall prohibit the Department from disclosing or permitting access to Public Records if the Department determines to disclose such records, except where such disclosure is otherwise prohibited by law.

Inspection of Records - Hours of Review – A Requesting Party may request to inspect Public Records. The Department shall provide reasonable access for reviewing Public Records during regular business hours (8:30 a.m. – 4:30 p.m.). Appointments will be scheduled at a mutually convenient time for the Requesting Party and the Department. If photocopies are desired, the specific records must be identified by tabbing or otherwise marking the pages. If less than twenty (20) pages and personnel are available, copies will be made while the Requesting Party waits.

Fees

1. Photocopying/Printout Fees – In instances in which paper records are provided to the Requesting Party, photocopying/printout fees shall be as follows:
 - Standard Sized, Black and White Copies/Printouts: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 copies/printouts shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following sizes: 8.5” x 11”; 8.5” x 14”; 11” x 17”.
 - Standard Sized, Color Copies/Printouts: A charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies.
 - Oversized, Black and White Copies/Printouts: The charge for copying oversized Public Records shall be \$2.00 per 18” x 22” sheet and \$3.00 per 24” x 36” sheet. The charge for copying documents larger than 24” x 36” shall be \$1.00 per square foot. Oversized documents that the Department or Office is not capable of reproducing will be sent off-site and the Requesting Party will be charged the actual costs incurred.

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- Oversized, Black and White Copies/Printouts: An additional charge of \$1.50 per sheet will be assessed for all color copies or printouts for oversized copies.
- Microfilm and/or Microfiche: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over 20 pages shall be \$0.15 per sheet.
- Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

2. Administrative Fees

- Administrative fees shall be levied for a FOIA Request requiring more than one (1) hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, but not limited to, identifying records; monitoring file reviews; and generating computer records (electronic or printouts). Administrative fees shall not include any cost associated with legal review of whether any portion of the requested records is exempt from FOIA. The Department responding to a FOIA Request shall work to ensure that administrative fees are minimized. To the extent possible, the responding Department shall minimize the use of non-administrative personnel in processing FOIA Requests.
- For FOIA Requests that require more than one (1) hour of staff time, the Department shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving the requested records, prior to fulfilling any FOIA Request that would require a Requesting Party to incur administrative fees. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the FOIA Request.
- Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly rate of the lowest paid employee(s) capable of performing the service. Administrative fees will be in addition to charges incurred for copying or printouts (as listed in the above section), or any other statutorily permitted charges.
- When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring photocopying fees or administrative charges, the Department may in its discretion aggregate such FOIA Requests when calculating fees and charges.

3. Fees for Non-Custodial Public Records – Before requesting any noncustodial Public Records, the Department shall provide an itemized written cost estimate to the requesting party, listing all charges expected to be incurred in retrieving such Public Records.

4. Fees for Third-Party Service Provision of Emails – Before engaging the third-party service provider to retrieve email records, the Department shall provide an itemized written cost estimate to the requesting party, listing all charges expected to be incurred in retrieving such records.

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5. Payment of Fees – Payment of all fees shall be due no later than the time records are released to the Requesting Party. However, the Department may require pre-payment of all fees prior to performing any services. The City accepts cash, credit or debit card, check or money order payable to the City of Wilmington. The City charges a return check fee of \$30.00. The City expressly reserves its statutory right to require a Requesting Party to pay all assessed fees prior to performing any service under the FOIA statute. The City also expressly reserves its right to waive all or a portion of assessed fees, and its right to waive pre-payment of assessed fees.

Appointment Rescheduling or Cancelation – A Requesting Party that cancels or does not reschedule an appointment to view records at least one full business day in advance of the appointment may be subject to charges incurred by the Department or Office in preparing the requested records. The Department or Office shall prepare an itemized invoice of these charges and provide it to the Requesting Party for payment in addition to any other applicable administrative fees and/or copying/printout fees.

Applicability

To the extent any provision of this Policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein shall be superseded.

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