

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))

FINAL

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations and promulgating new regulations setting forth the Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31, directing each executive branch agency to implement and promulgate Uniform Freedom of Information Act policies in substantial compliance with the form attached to the Executive Order. In accordance with 29 **Del.C.** §10113(b)(1) the Department of Education is repealing its prior regulations and adopting new final regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations are to prescribe procedures relating to the inspection and copying of public records retained by the Department of Education pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The regulations establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Education has developed new procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to, effectuate the Governor's Executive Order. The regulations reflect these procedures.
2. The Department of Education has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §10003(d).
3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Department of Education does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Lillian M. Lowery, Ed. D., Secretary of Education
Department of Education

~~202 Freedom of Information Act (FOIA) Procedures~~

1.0 Purpose

~~The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Education ("the DOE") pursuant to 29 **Del.C.** Chapter 100, the Freedom of Information Act ("FOIA"). It is the DOE's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.~~

~~This regulation applies to the DOE in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the DOE in its normal course of business with Federal, State or local agencies, nor to private parties (corporate or individual) with whom the DOE is conducting business, provided the public records are germane to the business being conducted.~~

It is the intent of the DOE, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA shall be processed in the manner prescribed below.

2.0 Definitions

"Documents in Active Use" means those records required as working documents by the Department of Education staff in performing current assignments.

"Documents in Storage" means those documents officially placed in the custody of the Delaware State Archives.

"DOE" means the Delaware Department of Education.

"Public Business" means any matter over which the DOE has supervision, control, jurisdiction, or advisory power.

"Public Information Officer" or **"PIO"** means the Public Information Officer, Delaware Department of Education.

"Public Record" means written or recorded information made or received by DOE relating to public business except the following:

Any personnel, medical, or pupil file, the disclosure of which would constitute an invasion of personal privacy, under any State or Federal law as it relates to personnel privacy.

Financial information obtained from a person which is of a privileged or confidential nature.

Investigative files for law enforcement purposes.

Any records specifically exempted from public disclosure by statute or common law.

Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the Department of Education whenever public anonymity has been requested of the Department with respect to said contribution by the contributor.

Any records involving labor negotiations or collective bargaining.

Any records pertaining to pending or potential litigation which are not records of any court.

Any record of discussions held in executive session.

"Requestor" means any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.

"Secretary" means the Secretary of Education or the Secretary's designee.

3.0 Availability of Records

3.1 Access

3.1.1 The DOE will provide reasonable access and facilities for reviewing public records during regular business hours.

3.1.2 The DOE shall make all requested records available for review by the requestor unless such records or portions of records are determined to be in active use, in storage, or otherwise exempted from disclosure as records deemed non-public pursuant to 29 **Del.C.** §10002(g).

3.1.3 The DOE reserves the right to deny any request in part or in full which does not comply with the procedures set forth herein and/or the provisions of the Freedom of Information Act, as amended.

3.2 DOE Records Review

3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.

3.2.2 The types of records deemed nonpublic are as contained in 29 **Del.C.** §10002(g).

3.2.3 DOE regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.

4.0 Record Request

4.1 Requests to access records shall be made in writing and shall adequately describe the records sought in sufficient detail to enable the DOE to locate the records with reasonable effort. The DOE shall make every reasonable effort to assist the requestor in identifying the record being sought. The request may be denied in part or in full and returned to the requestor for the following reasons:

4.1.1 The request does not adequately describe the records;

- 4.1.2 The request requires the DOE to perform research or to assemble information that has not been compiled; or
- 4.1.3 Reasons set forth in 3.1.3, or as addressed in other areas of this regulation not specified here.

5.0 DOE Response to Requests

- 5.1 The DOE shall make every reasonable effort to determine within 10 business days after receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.
- 5.2 If the DOE denies a request in whole or in part, the DOE shall indicate to the requestor the reasons for the denial.
- 5.3 The copying of any requested public records may be performed by DOE personnel and mailed to the requestor. If personnel are not available, DOE may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.
 - 5.3.1 If over 250 pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.
 - 5.3.2 Fragmentation of requests in order to avoid the 250 page limit shall not be allowed.
 - 5.3.3 The Department shall have discretion based on circumstances involved to make decisions regarding copying.

6.0 Fees

- 6.1 Administrative Fees
 - 6.1.1 Charges for administrative fees include:
 - 6.1.1.1 Staff time associated with processing FOIA requests;
 - 6.1.1.2 Locating and reviewing files;
 - 6.1.1.3 Monitoring file reviews; and
 - 6.1.1.4 Generating computer records (electronic or print-outs).
 - 6.1.2 Calculation of Administrative Charges
 - 6.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay-grade rate (prorated for quarter hour increments) for the personnel performing the service. Administrative charges will be in addition to any copying charges.
 - 6.1.2.2 Appointment Rescheduling/Cancellation — Requestors that do not reschedule or cancel appointments to view files at least two full business days in advance of the appointment may be subject to the administrative charges incurred by the DOE in preparing the requested records. The DOE will prepare an itemized invoice of these charges and mail to the requestor for payment.
- 6.2 Photocopying Fees
 - 6.2.1 The charge for copying standard sized, black and white 8.5" x 11" public records shall be \$0.25 per printed page (i.e., single-sided copies are \$0.25 and double-sided copies are \$0.50).
 - 6.2.2 The charge for copying standard sized, black and white 8.5" x 14" public records shall be \$0.30 per printed page (i.e., single-sided copies are \$0.30 and double-sided copies are \$0.60).
 - 6.2.3 The charge for copying standard sized, color 8.5" x 11" public records shall be \$1.00 per printed page (i.e., single-sided copies are \$1.00 and double-sided copies are \$2.00).
 - 6.2.4 The charge for copying standard sized, color 8.5" x 14" public records shall be \$1.50 per printed page (i.e., single-sided copies are \$1.50 and double-sided copies are \$3.00).
 - 6.2.5 Multiple copies shall not be made.
- 6.3 Electronic Generated Records
 - 6.3.1 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 magnetic tape, diskette, or compact disk costs) and administrative costs.
 - 6.3.2 In the event requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.
- 6.4 Other Copying Fees
 - 6.4.1 The DOE, at its discretion, may arrange to have records copied by an outside contractor if the DOE does not have the resources or equipment to copy such records. In this instance, the requestor shall be liable for payment of these costs.

6.5 Payment

- 6.5.1 ~~Payment for copies and/or administrative charges will be due at the time the copies are released to the requestor. The DOE reserves the right to refuse to make copies for requestors who have outstanding balances.~~
- 6.5.2 ~~The DOE may require pre-payment of copying and administrative charges prior to mailing copies of requested records.~~
- 6.5.3 ~~DOE personnel will maintain a receipt register and, upon request, provide the requestor with a receipt when payment is received.~~

Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

The following words and terms, when used in this policy, shall have the following meaning unless the context clearly indicates otherwise:

“**Agency**” means the Delaware Department of Education (DOE).

“**FOIA**” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.

“**FOIA Coordinator**” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“**FOIA Request**” or “**Request**” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the **Delaware Code** and in accordance with the policy hereunder.

“**FOIA Request Form**” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“**Non-Custodial Records**” shall have the meaning set forth in Section 3.6.

“**Public Record**” shall have the meaning set forth in 29 **Del.C.** §10002.

“**Requesting Party**” shall mean the party filing a FOIA Request.

“**Secretary**” means the Secretary of the Delaware Department of Education.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at the Delaware Department of Education, 401 Federal Street, Suite 2, Dover Delaware 19901, by email to FOIA Coordinator@doe.k12.de.us, by fax at 302-739-4654; or via online request form, which may be found on the Agency’s home page at www.doe.k12.de.us.

3.3 FOIA Coordinator

- 3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.
- 3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.
- 3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

- 3.4.1 The Agency 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 providing access to the requested records; denying access to 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 fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.
- 3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

- 3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort.

3.6 Requests for Other Non-Custodial Records

- 3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.
- 3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a 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.

3.7 Review by Agency

- 3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

- 3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: 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 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 standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:
18" x 22": \$2.00 per sheet
24" x 36": \$3.00 per sheet
Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall 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.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: 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 and above 20 shall be \$0.15 per sheet.

4.4 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.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.

4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

13 DE Reg. 252 (08/01/09)

15 DE Reg. 826 (12/01/11) (Final)

