

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10003(d)  
(18 **Del.C.** §§311 and 29 **Del.C.** §10003(d))

### FINAL

### ORDER

#### 700 Policies and Procedures Regarding FOIA Requests

AND NOW, this 1<sup>st</sup> day of July, 2012, in accordance with 18 **Del.C.** §311 and 29 **Del.C.** §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior regulations (as shown by strike through) 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 agencies 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 Insurance is repealing its prior regulations governing the Policies and Procedures regarding FOIA requests.

The purpose of the new regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Insurance 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 Insurance 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 substantially similar to the form attached to the Governor's Executive Order. The regulations reflect these procedures.

2. The Department of Insurance has statutory authority to promulgate regulations pursuant to 18 **Del.C.** §311 and 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 requirement 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 Insurance Commissioner of the State of Delaware does hereby ORDER that the regulations be, and 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).

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner  
Delaware Department of Insurance

#### 700 Policies and Procedures Regarding FOIA Requests

#### 4.0 Definitions

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

**“Commissioner”** means the Commissioner of the Delaware Insurance Department.

**“Department”** means the Delaware Department of Insurance.

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

**“FOIA Coordinator”** is defined as an individual designated by a public body to accept and process requests for public records under the act. The Commissioner shall designate the individual who shall be the FOIA Coordinator. The FOI Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

**“Public record”** is information of any kind, owned, made, used, retained received, produced, composed, drafted or otherwise compiled or collected by the Department 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 and not protected from disclosure by law.

**“Writing”** is defined as “handwriting, typewriting, printing, photo-stating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

**“Written request”** is defined as “a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.”

## **2.0 Purpose**

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for information as set forth in 29 ~~Del.C.~~ Chapter 100.

## **3.0 Records Request, Response Procedures and Access**

- 3.1 All FOIA Requests shall be made in writing to the Department, addressed to: FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall provide reasonable assistance to the public in identifying and locating records to which they are entitled access.
- 3.2 The Department shall respond, in writing, within ten working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether:
  - 3.2.1 the Department will permit inspection of the public records;
  - 3.2.2 the Department requires additional time beyond the 10 business days for circumstances to include but not limited to, the request is for voluminous records, requires legal advice, for the public record is in storage or archived. In the event the Department is unable to make the requested public records available for inspection with the 10 business day period, the Department shall provide an expected time at which they will be made available; or
  - 3.2.3 if it does not permit such inspection, the reason or reasons for such refusal.
- 3.3 Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed non-public pursuant to 29 ~~Del.C.~~ §10002(g) are removed. 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).
- 3.4 After receiving the response of the Department to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.
- 3.5 All FOIA Requests shall be coordinated by the FOIA Coordinator.
- 3.6 The Department shall provide reasonable access for reviewing public records during regular business hours. The Department shall make the requested public records available unless the records or portions of the records are determined to be excluded from the definition of a “public record” pursuant to 29 ~~Del.C.~~ §10002(g).

## **4.0 Fees**

### **4.1 Administrative Fees**

- 4.1.1 Charges for administrative fees include:

~~4.1.1.1 Staff time associated with processing FOIA Requests will include:~~

- ~~4.1.1.1.1 Locating and reviewing files;~~
- ~~4.1.1.1.2 Monitoring file reviews;~~
- ~~4.1.1.1.3 Generating computer records (electronic or print-outs);~~
- ~~4.1.1.1.4 Review of request by legal counsel~~
- ~~4.1.1.1.5 Other work items as necessary per request.~~

~~4.1.2 Calculation of Administrative Charges:~~

~~4.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hours increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.~~

~~4.1.2.1 Appointment Rescheduling/Cancellation — Requestors 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 administrative charges incurred by the Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and mail to the requestor for payment.~~

~~4.2 Photocopying Fees — The following are charges for photocopies of public records made by Department personnel:~~

~~4.2.1 Standard Sized, Black and White Copies.~~

~~4.2.1.1 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 \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:~~

- ~~4.2.1.1.1 8.5" x 11"~~
- ~~4.2.1.1.2 8.5" x 14" and~~
- ~~4.2.1.1.3 11" x 17"~~

~~4.2.2 Oversized Copies/Printouts.~~

~~4.2.2.1 The charge for copying oversized public records shall be as follows:~~

- ~~4.2.2.1.1 18" x 22" \$2.00 each~~
- ~~4.2.2.1.2 24" x 36" \$3.00 each~~

~~4.2.3 Color Copies/Printouts~~

~~4.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:~~

- ~~4.2.3.1.1 8.5" x 11"~~
- ~~4.2.3.1.2 8.5" x 14" and~~
- ~~4.2.3.1.3 11" x 17"~~

~~4.2.4 Microfilm and /or Microfiche Printouts.~~

~~4.2.4.1 Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.50 per printed page.~~

~~4.3 Electronically Generated Records.~~

~~4.3.1 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 disc costs) and administrative costs.~~

~~4.3.2 In the event that 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.~~

~~4.4 Payment~~

~~4.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.~~

~~4.4.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records.~~

## **5.0 ~~Effective Date of this Regulation.~~**

~~This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.~~

## **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.

Department 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 Department 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 Regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**Commissioner**” means the Delaware Insurance Commissioner.

“**Department**” means the Delaware Insurance Department.

“**FOIA**” means the Freedom of Information Act as established pursuant to 29 **Del.C.** Ch. 100.

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

“**FOIA Request**” or “**Request**” means a request to inspect or copy Public Records pursuant to 29 **Del.C.** §10003 and in accordance with the policy hereunder.

“**FOIA Request Form**” means the form promulgated by the Office of the Attorney General, and available on the Department’s home page, 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.

## **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 Department 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 Department’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 Department to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Department in locating the requested records, the Department 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 FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904, by email to [DOI\\_Legal@state.de.us](mailto:DOI_Legal@state.de.us), by fax at 302-739-5566; or via online request form, which may be found on the Department’s home page at <http://delawareinsurance.gov/>.

### **3.3 FOIA Coordinator**

3.3.1 The Commissioner shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Department’s responses thereto. The FOIA Coordinator shall be identified on the Department’s website. The FOIA Coordinator may designate other Department 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 Department employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Department in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Department 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 Department 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 Department shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, beginning on January 1, 2012, 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 Department received the Request; the Department's response deadline pursuant to §3.4; the date of the Department'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 Department 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 Department Response to Requests

3.4.1 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 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 Department 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 Department denies a request in whole or in part, the Department's response shall indicate the reasons for the denial. The Department 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 Department from its own records, if doing so can be accomplished by the Department with reasonable effort. If the Department determines that it cannot fulfill all or any portion of such request, the Department shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Department. Upon receipt from DTI, the Department may review the email records in accordance with § 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Department shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

#### 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 Department but that are either not within its possession or cannot otherwise be fulfilled by the Department with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Department shall promptly request that the relevant public body provide the Non-Custodial Records to the Department. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Department, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Department.

3.6.2 Before requesting any Non-Custodial Records, the Department 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 Department

3.7.1 Prior to disclosure, records may be reviewed by the Department 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 Department from disclosing or permitting access to Public Records if the Department 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 Department 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 Department's legal review of whether any portion of the requested records is exempt from FOIA. The Department 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 Department 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 Department 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 Department 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 Department may require all fees to be paid prior to any service being performed hereunder.

4.5.2 The Department 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 Department in preparing the requested records. The Department 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.

#### **6.0 Effective Date**

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

**14 DE Reg. 480 (11/01/10)**

**16 DE Reg. 87 (07/01/12) (Final)**