

DEPARTMENT OF ELECTIONS FOR KENT COUNTY

Statutory Authority: 29 Delaware Code, Section 10003(b) (29 Del.C. §10003(b))

FINAL

ORDER

1602 Policies and Procedures Regarding FOIA Requests

AND NOW, this 12th day of June, 2014 in accordance with 29 Del.C. §10003(b) for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures of the Delaware Department of Elections for Kent County regarding Freedom of Information Act ("FOIA") requests.

NATURE OF PROCEEDINGS

The Department of Elections for Kent County has adopted final regulations governing its Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Elections for Kent County pursuant to 29 Del.C. Ch. 100, the FOIA. The regulations establish a reasonable fee structure for copying, printing or electronically delivering public records as well as streamlining the procedures used to disseminate the information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Elections for Kent County has developed procedures for responding to requests from the public for information as set forth in 29 Del.C. Ch. 100. These regulations are in substantial compliance with, and necessary to, effectuate 29 Del.C. Ch. 100.

2. The Delaware Department of Elections for Kent County has statutory authority to promulgate these Policies and Procedures pursuant to 29 Del.C. §10003(b).

3. Pursuant to 29 Del.C. §10113(b)(1), regulations describing a Department'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 and Deputy Director of the Department of Elections for Kent County do hereby ORDER that the Policies and Procedures 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).

Doris J. Young, Director & J. Douglas Greig, Deputy Director

1602 Policies and Procedures Regarding FOIA Requests

1.0 Purpose

1.1 The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records in accordance with 29 Del.C. Ch. 100.

1.2 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 policy, shall have the following meaning unless the context clearly indicates otherwise:

"Department" means the Department of Elections for Kent County

"Deputy Director" means the Deputy Director, Department of Elections for Kent County.

"Director" means the Director, Department of Elections for Kent County.

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

"FOIA Coordinator" means the person designated by the Director and/or Deputy Director to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect 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 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" means 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 mail, email or online in accordance with Section 3.2. 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 proper form. Copies of the FOIA Request Form may be obtained from the Department, the Department's website, or from the office or website of any state Agency.

3.1.2 All requests shall 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 the Department's office, by email to votekc@state.de.us, or via online request form, which can be found at http://electionskc.delaware.gov/information/foia/foia_request_form.pdf

3.2.2 The Department's address is as follows:

Department of Elections for Kent County

100 Enterprise Place, Suite 5

Dover, DE 19904

Phone: 302.739.4498

FAX: 302.739.4515

Email: mailto:votekc@state.de.us

Web Site: <http://electionskc.delaware.gov/>

3.3 FOIA Coordinator

3.3.1 The Director and Deputy Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and shall 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 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 that 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 has received the request. The Department shall provide the Requesting Party with the name and phone number of the FOIA coordinator of the relevant Agency and confirmed that it had received the request.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the 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 Section 3.4; the date of the Department's response pursuant to Section 3.4 (including the reasons for any extension pursuant to Section 3.4.1); the names, contact information and dates of correspondence

with individuals contacted in connection with requests pursuant to Sections 3.3.2, 3.5 and 3.6; the dates of review by the Department pursuant to Section 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 may 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 with reasonable effort 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 forward a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving the 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 Section 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. 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. The Department shall provide reasonable access for reviewing Public Records during regular business hours from 8 a.m. to 4:30 p.m. Monday through Friday.

4.0 Fees

4.1 Photocopying, printing and other associated Fees:

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying and printing 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 or printing oversized Public Records shall be as follows:

<u>18" x 22":</u>	<u>\$2.00 per sheet</u>
<u>24" x 36":</u>	<u>\$3.00 per sheet</u>
<u>Larger than 24" x 36":</u>	<u>\$3.00 plus \$1.00 per square foot above the first 6 square feet</u>

4.1.1.3 Color Copies/Printouts: An additional charge of \$.50 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 \$1.00 per sheet for larger copies.

4.1.1.4 Electronic Media fees: The cost of providing records on a CD or DVD is \$10.00 in addition to any Administrative or copying fees.

4.1.1.5 There shall be no charge for delivering records electronically, however there may be a copying fee if portions of a record or records have to be redacted in addition to an Administrative fee in accordance with section 4.2.

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 responsive 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 are 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. Administrative fees shall be charged at the rate of \$14 per hour.

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. Administrative fees will be in addition to any other charges incurred under this Section 4.0, 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: The Department requires payment of fees in U. S. currency by cash or check (payable to the "State of Delaware") before fulfilling a request for records.

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.

18 DE Reg. 58 (07/01/14) (Final)