

**STATE OF DELAWARE
GOVERNOR'S OFFICE
DOVER
EXECUTIVE ORDERS**

Number 31: Improving Access To Public Records Through Uniform Procedures For Freedom Of Information Act Requests

WHEREAS, it is the policy of this State and this administration that the business of government be performed in an open and public manner so that citizens can "observe the performance of public officials" and "monitor the decisions that are made by such officials in formulating and executing public policy," 29 Del. C. § 10001, and that policy is guaranteed and implemented by the Freedom of Information Act, 29 Del. C. ch. 100 (the "Act" or "FOIA"); and

WHEREAS, access to public records is a vital component of FOIA, and public bodies are instructed by the Act to develop policies and rules to implement its provisions faithfully; and

WHEREAS, in the thirty years since the Act became law, executive branch agencies have enacted their own policies to implement the Act, and, over time, those policies have evolved and been amended as the needs of each agency required; and

WHEREAS, as a result of those amendments, the policies of executive branch agencies now differ substantially from one another, leading to inconsistencies and disparities in the implementation of FOIA across agencies; and

WHEREAS, after a comprehensive review of executive branch agency policies, I have concluded that it is in the best interest of the citizens of this State that uniform FOIA policies be implemented by each executive branch agency, and that such uniform policies would help reduce the inconsistencies and differences across agencies while promoting access to public records; and

WHEREAS, standardized FOIA policies for executive branch agencies will also help aid in the implementation of Senate Bill No. 87, which requires the Attorney General to promulgate a standard form by which FOIA requests can be made; and

WHEREAS, a more uniform FOIA policy should help reduce the time and expense of making a FOIA request, and can do so by reducing the copying costs charged by the agency and ensuring that agencies collaborate to ensure that records are produced even when the request is made to the wrong agency; and

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. All executive branch agencies shall implement and promulgate a policy for addressing requests made under the Freedom of Information Act substantially in the form attached hereto as Exhibit A. Executive branch agencies shall adopt such policy and rescind any existing FOIA policy no later than February 1, 2012.
2. All executive branch agencies shall develop a web portal for receiving FOIA requests through the Internet. Such portals shall utilize the standard request form required pursuant to Senate Bill No. 87 and promulgated by the Attorney General, and shall be available for use on Delaware.gov on or before December 1, 2011.
3. All executive branch agencies are reminded of their duty to provide reasonable assistance to the public in identifying and locating public records to which they are entitled access, and that all records held by the agency are "public records" to which the public should have access unless they fall within the scope of an enumerated exception in 29 Del. C. § 10002(g).
4. Agencies of state and local government outside the executive branch are encouraged to reevaluate their FOIA policies and consider whether, in light of Senate Bill No. 87, evolving technology, or recent FOIA authority, their policies might be updated or amended to improve access to public records and potentially standardize the procedures by which requests for public records are made.
5. This Executive Order is a directive from the Governor to Executive Branch agencies. It is not intended to and shall not create independent causes of action for or on behalf of persons who allege a lack of compliance with the Order.

APPROVED this 20th day of October, 2011