

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 10113(b)(1) (14 **Del.C.** §10113(b)(1))
14 **DE Admin. Code** 202

FINAL

REGULATORY IMPLEMENTING ORDER

202 Freedom of Information Act (FOIA) Procedures

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to publish the final Department of Education Freedom of Information Act (FOIA) Procedures regulation related to the procedures related to the inspection and copying of public records retained by the Department of Education pursuant to 29 **Del.C.** Chapter 100, Freedom of Information Act (FOIA). This regulation is exempt from the formal procedural requirements of the Administrative Procedures Act pursuant to 29 **Del.C.** §10113(b)(2) as these are rules of practice and procedure of the Department of Education.

II. Findings of Facts

The Secretary finds that it is appropriate to publish the final Freedom of Information Act (FOIA) Procedures as this regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act (FOIA).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to publish the final Department of Education Freedom of Information Act (FOIA) regulation related to FOIA as attached hereto as Exhibit "B".

IV. Text and Citation

The text of the Department of Education Freedom of Information Act (FOIA) Procedures regulation hereby shall be in the form attached hereto as Exhibit "B".

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15 day of July 2009.

Department of Education

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

Approved this 15 day of July 2009

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.