

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET**

Statutory Authority: 29 Delaware Code, Section 6303(A) (29 **Del.C.** §6303(A))

FINAL

ORDER

Policies and Procedures Regarding FOIA Requests

AND NOW, this 1st day of December, 2011 in accordance with 29 **Del.C.** §6303A(16) and 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 Office of Management and Budget 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 Office of Management and Budget 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 Office of Management and Budget 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 Office of Management and Budget has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §6303A (16).

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 Office of Management and Budget 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).

Ann Shepard Visalli, Director

~~**Freedom Of Information Act Regulation**~~

1.0 Definitions

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

~~"Director" means the Director of the Delaware Office of Management and Budget.~~

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

~~"FOIA Request" means a request to inspect public records pursuant to Section 10003, Chapter 100 of Title 29 of the Delaware Code Annotated.~~

~~"Office" means the Delaware Office of Management and Budget.~~

2.0 Enabling Legislation

Pursuant to ~~29 Del.C. §6301A~~, the Office was established. The Office has authority to make regulations pursuant to ~~29 Del.C. §6303A(16)~~. The Regulation is established in compliance with ~~29 Del.C. §10003(b)~~.

3.0 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. Ch.100~~.

4.0 Records Request, Response Procedures and Access

- 4.1 All FOIA Requests shall be made in writing to the Office, addressed to: Director of Policy and External Affairs, Office of Management and Budget, Haslet Building, 122 William Penn St., Dover, DE 19901. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Office to locate the records with reasonable effort. The Office shall provide reasonable assistance to the public in identifying and locating public records to which they are entitled access.
- 4.2 The Office 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:
 - 4.2.1 the Office will permit inspection of the public records;
 - 4.2.2 the Office requires additional time beyond the 10 business days for circumstances to include but not be limited to, the request is for voluminous records, requires legal advice, or the public record is in storage or archived. In the event the Office is unable to make the requested public records available for inspection within the 10 business day period, the Office shall provide an expected time at which they will be made available; or
 - 4.2.3 If it does not permit such inspection, the reason or reasons for such refusal.
- 4.3 Prior to disclosure, records will be reviewed to insure 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)~~.
- 4.4 After receiving the response of the Office 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.
- 4.5 All FOIA Requests shall be coordinated by the Policy and External Affairs section of the Office.
- 4.6 The Office will provide reasonable access for reviewing public records during regular business hours. The Office will 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)~~.

5.0 Fees

- 5.1 Administrative Fees:
 - 5.1.1 Charges for administrative fees include:
 - 5.1.1.1 Staff time associated with processing FOIA Requests will include:
 - 5.1.1.2 Locating and reviewing files;
 - 5.1.1.3 Monitoring file reviews;
 - 5.1.1.4 Generating computer records (electronic or print-outs);
 - 5.1.1.5 Other work items as necessary per request.
 - 5.1.2 Calculation of Administrative Charges:
 - 5.1.2.1 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 hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.
 - 5.1.2.2 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 Office in preparing the requested records. The Office will prepare an itemized invoice of these charges and mail to the requestor for payment.
- 5.2 Photocopying Fees — The following are charges for photocopies of public records made by Office personnel:
 - 5.2.1 Standard Sized, Black and White Copies:
 - 5.2.1.1 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:

8.5" x 11"

8.5" x 14" and

11" x 17"

5.2.2 Oversized Copies/Printouts.

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

18" x 22" \$2.00 each

24" x 36" \$3.00 each

5.2.3 Color Copies/Printouts

5.2.3.1 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:

8.5" x 11"

8.5" x 14" and

11" x 17"

5.2.4 Microfilm and/or Microfiche Printouts.

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

5.3 Electronically Generated Records.

5.3.1 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.

5.3.2 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.

5.4 Payment.

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

5.4.2 The Office may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

6.0 **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.

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.

Office employees are reminded 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 Office and 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:

"**Director**" means the Director of the Office of Management and Budget.

"**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 Director 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.

“Office” means the Office of Management and Budget.

“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 Office 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 Office’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 Office to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Office in locating the requested records, the Office may request 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

Office of Management and Budget

Office of the Director

122 William Penn St.

Dover, DE 19901

by email to omb_foia@state.de.us; by fax at (302) 739-5661; or via online request form, which may be found on the Office’s home page at www.omb.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Office’s responses thereto. The FOIA Coordinator shall be identified on the Office’s website. The FOIA Coordinator may designate other Office 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 Office employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought and assist the Office in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Office 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 the request has been forwarded. The Office 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 Office 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 Office received the Request; the Office’s response deadline pursuant to §3.4; the date of the Office’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 Office 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 Office Response to Requests

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

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

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

3.7.1 Prior to disclosure, records may be reviewed by the Office to ensure 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 Office from disclosing or permitting access to Public Records if the Office 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 Office 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:

<u>18" x 22":</u>	<u>\$2.00 per sheet</u>
<u>24" x 36":</u>	<u>\$3.00 per sheet</u>
<u>Documents larger than 24" x 36":</u>	<u>\$1.00 per square foot</u>

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 Office's legal review of whether any portion of the requested records is exempt from FOIA. The Office shall make every effort to ensure administrative fees are minimized and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Office 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 Office 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 Office 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 Office may require all fees to be paid prior to any service being performed hereunder.
 - 4.5.2 The Office 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 Office in preparing the requested records. The Office 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.

14 DE Reg. 57 (07/01/10)

15 DE Reg. 925 (12/01/11) (Final)