

The City of Lewes

Policies & Procedures Regarding FOIA Requests

1. 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.

City of Lewes 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 may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the City of Lewes and to comply with the policy that the public shall have reasonable access to Public Records.

2. Definitions

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

CITY means the City of Lewes/City Manager's Office

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 City Manager 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 means records that are not contained within the City's Public Records but pertain to City business.

Public Record shall have the meaning set forth in 29 Del.C. §10002.

Requesting Party shall mean the party filing a FOIA Request.

City Manager means the City Manager of the City of Lewes.

3. Records Request, Response Procedures and Access

A. Form of Request

- 1) All FOIA Requests shall be made in writing to the CITY 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 proper form. Copies of the FOIA Request Form may be obtained from the CITY website, or from the CITY office.
- 2) All requests shall adequately describe the records sought in sufficient detail to enable the CITY to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the CITY in locating the requested records, the CITY may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

B. Method of Filing Request

- 1) FOIA requests may be made by mail or in person to the FOIA Coordinator at The City of Lewes, FOIA Coordinator, PO Box 227, Lewes, DE 19958,
- 2) Email to FOIACoordinator@ci.lewes.de.us
- 3) Fax to FOIA Coordinator at (302) 645-6406
- 4) Online request form, which may be found on the CITY home page at www.ci.lewes.de.us.

C. FOIA Coordinator

- 1) The CITY shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the CITY response. The FOIA Coordinator shall be identified on the CITY website. The FOIA Coordinator may designate other CITY employees to perform specific duties and functions to complete said FOIA request.
- 2) The FOIA Coordinator, working in cooperation with other CITY employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and locating and providing the requested records.
- 3) The FOIA Coordinator will also work to foster cooperation between the CITY and the Requesting Party.
- 4) Without limitation, if a Requesting Party initiates a FOIA request that would more appropriately be directed to another CITY custodial party, the FOIA Coordinator shall promptly forward such request to the relevant CITY custodial party and promptly notify the Requesting Party that the request has been forwarded. The CITY may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant CITY custodial party that the relevant CITY custodial party has received such request. The CITY shall provide the Requesting Party with the name and phone number of the relevant CITY custodial party.

- 5) 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 CITY received the Request; the CITY response deadline; the date of the CITY response (including the reasons for any extension pursuant; the names, contact information and dates of correspondence with individuals contacted in connection with requests; the dates of review by the CITY; and the names of individuals who conducted such reviews; the amount of copying and/or administrative fees assessed; and the date of final disposition.

D. Response to Requests

- 1) The CITY shall respond to a FOIA Request 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.
- 2) If access cannot be provided within fifteen (15) business days, the CITY shall cite one of the reasons why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.
- 3) If the CITY denies a request in whole or in part, the CITY response shall indicate the reasons for the denial. The CITY shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.
- 4) The CITY shall provide a cost estimate to the Requesting Party for the cost of providing the requested records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

E. Requests for Email

- 1) Requests for email records shall be fulfilled by the CITY from its own records, if doing so can be accomplished by the CITY with reasonable effort. If the CITY determines that it cannot fulfill all or any portion of such request, the FOIA Coordinator shall promptly request that the CITY staff provide the email records to the CITY Manager. Upon receipt from staff, the CITY Manager may review the email records.
- 2) Before requesting outside vendors to provide email records, the CITY shall provide a written cost estimate from outside vendors to the Requesting Party, listing all charges expected to be incurred by outside vendors in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

F. Requests for Other Non-Custodial Records

- 1) If all or any portion of a FOIA Request seeks records controlled by the CITY but that are either not within its possession or cannot otherwise be fulfilled by the CITY with reasonable effort (Non-Custodial Records) then the CITY shall promptly request that the relevant public body provide the Non-Custodial Records to the CITY. Prior to disclosure, records may be reviewed by the CITY, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the CITY.

- 2) Before requesting any Non-Custodial Records, the CITY 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.

E. Review by the CITY

Prior to disclosure, records will be reviewed by the CITY to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del. C. §10002(l) 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(l) or any other applicable provision of law. Nothing herein shall prohibit the CITY from disclosing or permitting access to Public Records if the CITY determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

F. Hours of Review

The CITY shall provide reasonable access for reviewing Public Records during regular business hours, Monday-Friday, 9:00am to 4:00pm, except when holidays occur.

4. FEES

A. Photocopying Fees

- 1) In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:
 - a) 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" and 8.5" x 14".
 - b) Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows: Actual costs incurred, including time to arrange printing, by the CITY for the use of commercial printing vendors will be charged to the Requesting Party.

B. Administrative Fees

- 1) Administrative fees shall be levied for requests requiring more than one hour of staff time to process.
- 2) 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).
- 3) Administrative fees shall not include any cost associated with the CITY legal review of whether any portion of the requested records is exempt from FOIA.

- 4) The CITY 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 CITY shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.
- 5) Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the CITY 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.
- 6) 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.
- 7) When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the CITY may in its discretion aggregate staff time for all such requests when computing fees.

C. Electronically Generated Record Fees

- 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 DVD, CD, or other electronic storage costs) and administrative costs.

D. Payment

- 1) Payment of all fees shall be due no later than the time the records are released to the Requesting Party.
- 2) The CITY may require pre-payment of all fees prior to performing any services hereunder.

G. Appointment Rescheduling or Cancellation Fees

- 1) 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 CITY in preparing the requested records.
- 2) The CITY shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5. APPLICABILITY

To the extent any provision in this policy conflicts with any other applicable law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.