

TOWN OF FREDERICA
Freedom of Information Act Policy

Section 1- Purpose

The purpose of this Policy is to prescribe procedures relating to the inspection and copying of public records retained by the Town of Frederica pursuant to Title 29 Delaware Code, Chapter 100, known as the State of Delaware Freedom of Information Act. It is the Town's goal in establishing this Policy to maximize the amount of information available to the public, establish a reasonable fee structure for providing public records, and streamline procedures used to disseminate this information. Title 29 §10003 of the Delaware Code read as follows:

“(a) All public records shall be open to inspection and copying by any citizens of the State during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen, If the record is in active use or in storage and, there fore, not available at the time a citizen requests access, the custodian shall so inform the citizens and make an appointment for said citizen to examine such records as expediently as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.

(b) 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.”

This Policy applies to the Town in dealing with requests from the public for information as set forth in the FOIA. It does not apply to the Town in its normal course of business with Federal, State, or local agencies, not to private parties with whom the Town is considering business (permit, contractual agreement licenses, etc.), provided the public records are germane to the business being conducted.

It is the intent of the Town of Frederica that public business be performed in an open and public manner so that the citizens shall be advised of the performance of officials and their decisions. In accordance with FOIA, the public has the right to “reasonable access” to public records. The Act provides that it is 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. It is the Policy of the Town of Frederica that all employees shall comply with FOIA and all requests for information shall be processed in the manner prescribed below.

Section 2- Definitions

“Department” — a Department of the Town of Frederica

“Exempt” — information determined by the Town Manager and/or Town Solicitor to constitute a record that shall not be deemed public in accordance with Title 29 Delaware Code.

“FOIA” — Title 29, Delaware Code, Chapter 100, known as the State of Delaware Freedom of information Act.

“FOIA Coordinator” — The Mayor of the Town of Frederica

‘Public Record’ — “Public Record” is information of any kind owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.

Excluded from these definitions are:

1. Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under the legislation or under any State or Federal law as it relates to personal privacy;
2. Trade secrets and commercial or financial information obtained from a person, which is of a privileged or confidential nature;
3. Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pre-trial and pre-sentence investigative files, pre-trial and pre-sentence investigations and child custody and adoption files where there is no criminal complaint at issue;
4. Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;
5. Intelligence files compiled for law enforcement purposes, the disclosure of which could constitute an endangerment to the local, State or National welfare and security;
6. Any records specifically exempted from public disclosure by statute or common law;
7. Any records, which disclose the identity of the contributor of a bona fide

and lawful charitable contribution to the public body, whenever public anonymity has been requested of other public body with respect to said contribution by the contributor;

8. Any records involving labor negotiations or collective bargaining;
9. Any records pertaining to pending or potential litigation, which are not records of any court;
10. Subject to Subsection (1) of Title 29 of the Delaware Code, with respect to release of minutes of executive sessions, any record of discussion held in executive session pursuant to Subsection (b) and (c) of §10004 of Title 29 of the Delaware Code; and
11. Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon, provided, however, all records relating to such permits shall be available to all bona fide law enforcement officers.

"Requestor" — any individual, organization, or business that submits a request for information under the Delaware Freedom of Information Act.

"Town" — the Town of Frederica.

Section 3 — Availability of Records

3.1 — Access

- (a) Town will provide reasonable access and facilities for reviewing public records during regular business hours.
- (b) The Town shall make all requested records available for review by the requestor unless such records or portions of records are determined by the FOIA Coordinator to be exempt pursuant to Title 29, Delaware Code §10002(d) — see Section 6 of this Policy for listing.

3.2 — Town Records Review

- (a) Prior to disclosure, records will be reviewed to insure that those records or portion of records deemed non-public are removed.
- (b) Upon request, the Town will provide a log of records that may have been deemed non-public. The log will include the following information:
 - (1) The document's author
 - (2) The addressee
 - (3) The date of the document
 - (4) The title of the document or a brief explanation of the document's contents

- (5) The statutory exemption
- (c) The types of records deemed exempt are as contained in Title 29, Delaware Code §10002(d) (see Section 6)
- (d) Town brochures, pamphlets, informational bulletins, and other such information are not subject to this Policy.

Section 4— Request for Public Records

Requests for access to records shall be made in writing and shall adequately describe the record sought in sufficient detail to enable the Town to locate the record with reasonable effort. The Town shall make every reasonable effort to assist the requestor in identifying the record being sought. Any department that receives a request for a “public record(s)” shall ascertain from the requesting party the specific materials requested.

If a Department is not sure that a requested item is a “public record”, the request for documentation should be forwarded to the FOIA Coordinator for consultation with the Town Solicitor in determining if the requested documents are a “public record” and fall under the jurisdiction of the FOIA.

If a requesting party wants to review original materials, a staff member shall be assigned to monitor the review to insure that the integrity of all materials is maintained. A monitor may be required at other times as the discretion of the Town Manager or designee.

4.1 Types of Access Allowed/Requests for Records

- (a) Records shall be open to public inspection and copying
- (b) Must be provided during regular business hours
- (c) Reasonable access to records cannot be denied
- (d) Reasonable facilities for copying cannot be denied
- (e) If the requested records are not in active use and are in storage, then an appointment should be made for access.

4.2 Response to Requests

- (a) The Town shall make every reasonable effort to response to a request within fifteen (15) business days of submittal.
- (b) If the Town denies a request in whole or in part, the Town shall indicate to the requestor the reasons for the denial.

4.3 Appeals

- (a) Denied requests may be appealed by submitting to the Town Council a written appeal that specifically indicates “appeal of FOIA request” and identifies the reason or reasons for reversal of the denial.
- (b) The requestor may proceed in accordance with Title 29 Delaware Code,

§10005.

Section 5— Fees for Copying and Research

The fees to be charged for complying with a request under the FOIA shall not exceed any one or more of the following items, as applicable.

5.1 Duplication/Copying Fees

The following are duplicating/copying charges for providing public records:

(a) **Standard Size. Black and White Copies**

Cost for duplication or publication, including labor, for standard sized, black and white public records shall be \$0.30 per page for 8.5"x 11" sized paper.

(b) **Computer/Electronically Generated**

Charges for copying records maintained in an electronic formation will be calculated by the material costs involved in generating the copies (including, but not limited to: cassette tapes, videotapes, computer disks costs) and administrative costs. Actual costs shall be assessed for copying computer-generated records and providing other materials such as videotapes, computer disks, etc.

(1) In the event that requests for records maintained in an electronic format can be electronically provided to the requestor, only the administrative charges in preparing the electronic records will be charged.

(c) The Town reserves the right to refuse to make copies for requestors who have an outstanding balance for copy charges.

(d) The Town shall have discretion based on circumstances involved to make decisions regarding copying.

5.2 Administrative Fees

The following are administrative fees for providing public records.

(a) **Actual Labor Costs**

In calculating the cost of labor incurred, the Town may not charge more than the hourly wage of the lowest paid Town employee capable of retrieving the information necessary to comply with the request. Labor charges will be billed to the requestor per quarter

hour. Labor charges will be in addition to any duplicating/copying charges. Charges for actual labor costs include:

- (1) Staff time associated with processing FOIA requests;
- (2) Locating and reviewing files;
- (3) Monitoring a requestor's review of original materials;
- (4) Generating computer records (electronic or print-outs); and
- (5) Any other time rendered by the employee in research, examining, developing, duplicating, reviewing, and separating exempt from non-exempt information that has been requested.

(c) Other Costs

Any other actual costs associated with fulfilling a request for information such as postage, shall be at the expense of the requestor.

If the Town does not have the resources or equipment to duplicate requested records, the Town, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the requestor will be liable for payment of these costs.

The requester shall be provided an estimate of the costs involved to fulfill their request for information. Prepayment of the fees is required. In providing access to public records, the FOIA Coordinator may take necessary and reasonable action to protect the Town's public records and to prevent excessive and unreasonable interference with the discharge of the Town functions. This Policy does not require the Town to make a compilation, summary or report of information or to create records that do not otherwise exist.

5.3 Waiver of Fees

The FOIA Coordinator or designee shall have the authority to determine if a fee for a FOIA request shall be waived and the following criteria shall be used to render such a decision.

- (a) The public record is already available in duplicate form (extra copies)

No written request will be required to charges levied for requests to review specific documents, which are required by ordinance to be made available to the public by the Town administrative staff.

5.4 Payment

- (a) Payment for copies and/or administrative charges will be due at the time copied is released to the requestor. The Town reserves the right to refuse to make copies for requestors that have outstanding balances.
- (b) The Town may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

- (c) A good faith deposit must be provided in advance for those requests for which the fees are estimated to be over \$50.00. The deposit shall not exceed one-half of the total estimated fees.
- (d) The fee must be received before copies are delivered or before searching and reviewing commences, if a deposit is required.

Section 6—Exempt Records

Those records that are deemed non-public are as contained in Title 29, Delaware Code, §10002(d).

Adopted by City Council On 15 MAY 2013.
Date

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