

## **EXECUTIVE ORDER 2012-03 (Revised 6-29-12)**

**WHEREAS**, Governor Markell in Executive Order No. 31 issued a uniform state-wide FOIA policy and encouraged all local governments to reevaluate their FOIA policies and consider whether their policies might be updated and standardized to improve the public's access to public records; and

**WHEREAS**, the County undertook such a reevaluation which revealed that each County Department within the executive branch had established its own FOIA policies and, although compliant, the policies differed substantially from one another leading to inconsistencies and disparities across County Departments; and

**WHEREAS**, I have concluded that it is in the best interests of the citizens of this County that a uniform county-wide policy outlining the procedure for the collection of, and response to, requests for information from members of the public apply to all County Departments and that such policy mirror that of the State's to best improve the public's access to public records.

**NOW, THEREFORE, I, PAUL G. CLARK**, by virtue of the authority vested in me as the County Executive of New Castle County, do hereby **DECLARE** and **ORDER** that all County Departments implement the policy contained herein and utilize the standard form for FOIA requests attached hereto as Exhibit A.

### **UNIFORM POLICY REGARDING FREEDOM OF INFORMATION ACT REQUESTS**

1. **Definitions:**

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

“Department” means departments of the executive branch of New Castle County.

“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 office or department head 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 County Executive upon which requests for Public Records may be made.

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

“Requesting Party” shall mean the party filing a FOIA Request.

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

## 3. **Records Request, Response Procedures and Access**

### (a) **Form of Request**

All FOIA Requests shall be made in writing to the Department in person, by email, by fax, or online. FOIA Requests may be submitted using the FOIA Request Form; however, any FOIA Request that contains the required information and otherwise conforms with this policy shall not be denied solely because the request is not on the promulgated form.

All requests shall adequately describe the records sought in sufficient detail to enable the Department to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Department in locating the requested records, the Department 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. If the records requested pertain to real property, the request should provide as much identifying information including, but not limited to, Tax Parcel Number, Permit Number, Record Plan Number, property address or location, age of property and any other relevant information.

Note that any records over two (2) years old may be located in off-site archives and will be subject to a retrieval fee. The Requesting Party shall be provided with written cost estimate of such retrieval fees prior to retrieving such records. Boxes will be kept on-site for review for twelve (12) business days before being returned to archives.

### (b) **Method of Filing Request**

FOIA Requests may be made by mail, in person, by email, or by fax to the Department's FOIA Coordinator who is identified on the FOIA Request Form and on the County's website. Copies of the FOIA Request Form may be obtained from the Department, the County's website ([www.nccde.org](http://www.nccde.org)), or by contacting the County at 302-395-5555.

### (c) **FOIA Coordinator**

The County Executive shall designate a FOIA Coordinator for each office and/or department, who shall serve as the point of contact for FOIA Requests and coordinate the County's responses thereto. The FOIA Coordinator may designate other Department

employees to perform specific duties and functions.

The FOIA Coordinator and/or his or her designee, working in cooperation with other Department employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Department in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Department and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another Department, the FOIA Coordinator shall promptly forward such request to the relevant Department and promptly notify the Requesting Party that the request has been forwarded. The Department may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant Department that the relevant Department has received such request. The Department shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant Department.

In addition to the foregoing responsibilities, 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 Department received the Request; the Department's response deadline; the date of the Department's response (including the reasons for any extension); the names, contact information and dates of correspondence with individuals contacted in connection with requests; the dates of review by the Department 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.

**(d) Department Response to Requests**

The Department shall respond to a FOIA Request as soon as possible, but in any event within ten (10) 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. If access cannot be provided within ten (10) business days, the Department 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.

If the Department denies a request in whole or in part, the Department's response shall indicate the reasons for the denial. The Department shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

Records requested can be picked up at the Department's office, emailed (if available electronically) or faxed with no charge. If the requesting party requests that the requested records be mailed via Postal Service, the requesting party shall be responsible for the cost of mailing.

**(e) Requests for Email**

Requests for email records shall be fulfilled by the Department from its own records, if

doing so can be accomplished by the Department with reasonable effort. If the Department determines that it cannot fulfill all or any portion of such request, the Department shall promptly request that the Office of Administrative Services Information Systems Section ("IS") provide the email records to the Department.

**(f) Review by Department**

Prior to disclosure, records may be reviewed by the Department to ensure that 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 Department from disclosing or permitting access to Public Records if the Department determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

**(g) Hours of Review**

The Department shall provide reasonable access for reviewing Public Records during regular business hours (8:00 a.m. – 4:00 p.m.). Appointments will be scheduled at a mutually convenient time for the applicant and the Department. If photo copies are desired, the specific records must be identified by tabbing the pages. If less than twenty (20) pages *and* personnel are available, copies will be made while you wait.

**(h) Fees**

(i) Photocopying Fees. In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

- **Standard Sized, Black and White Copies/Printouts:** 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".
- **Standard Sized, Color Copies/ Printouts:** A charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies.
- **Oversized Black and White Copies/Printouts:** The charge for copying oversized Public Records shall be \$2.00 per 18" x 22" sheet and \$3.00 per 24" x 36" sheet. The charge for copying documents larger than 24" x 36" shall be \$1.00 per square foot. Over-sized documents that the Department is not capable of reproducing will be sent off-site and the Requesting Party will be charged the costs incurred.
- **Oversized Color Copies/Printouts:** An additional charge of \$1.50 per sheet will be assessed for all color copies or printouts for oversized copies.
- **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.

- **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.

(ii) Other Service Fees

- Address labels: \$0.50/label
- Notary Fee: \$3.00/document
- Office of Finance Custom Report Fee: \$85.00/report\*  
Updated Data: Where a customer requests periodic updates of the data contained on a custom report, a separate request shall be made for each update and the \$85.00 shall be charged for each request.

\* FOIA does not require a public body to make a compilation, summary, or a report of information, nor does it require a public body to create a new public record. For this reason, a flat fee applies to "custom-made" reports. For assessment purposes, the Office of Finance maintains a File Transfer Protocol site ("FTP site"), updated monthly, which houses comprehensive data based upon numerous identifiers on every parcel within New Castle County. The FTP site can be accessed at no charge but it does require a username and password (please contact the FOIA Coordinator for the Office of Finance). Finance cannot offer users technical support or assist in interpreting the data on the FTP site. Finance may have the technical ability to extract certain identifiers from the database and create a report in a Microsoft® Excel readable file upon request (e.g. all property owners with a 19810 zip code owning greater than 2 ac.) however, such a report would be subject to the \$85.00 Custom Report Fee.

(iii) Administrative Fees

- 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, identifying records; monitoring file reviews; and generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Department's legal review of whether any portion of the requested records is exempt from FOIA. The Department 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 Department shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.
- For requests that require more than one hour of staff time, the Department shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records, prior to fulfilling any

request that would require a Requesting Party to incur administrative fees. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

- 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(s) capable of performing the service. Administrative fees will be in addition to any other charges incurred under Section (h), including, but not limited to, copying fees.
- When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring photocopying fees or administrative charges, the Department may in its discretion aggregate such requests when computing fees.

**(i) Payment**

Payment of all fees shall be due no later than the time the records are released to the Requesting Party. The Department may require pre-payment of all fees prior to performing any services. The County accepts cash or check/money order payable to "New Castle County." There is a return check fee of thirty-five dollars (\$35). Certain Departments may accept credit cards.

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 Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

**(j) 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.

**(k) Effective Date**

This policy shall become effective May 1, 2012.