



Delaware State University

University Area(s) Responsible: University General Counsel; Office of Finance and Administration

Policy Number & Name: 5-02: Rules on Access to Public Records under the Delaware Freedom of Information Act

Approval Date: 8/15/11

Revisions: _____

Related Policies and Procedures: _____

Purpose

In order to comply with §10003(b) of the Delaware Freedom of Information Act, 29 Del. C. §10003(b), Delaware State University has adopted the following rules on access to public records under the Delaware Freedom of Information Act.

Definitions (As they pertain to these rules)

University- means Delaware State University.

FOIA -means the Delaware Freedom of Information Act.

Requestor- means any individual, organization, or business submitting a request for a public record under the FOIA.

Confidential information-means information determined by the University to constitute a trade secret or commercial or financial information that is of a confidential nature.

Trade secret- means a formula, pattern, device or compilation of information that may be used to obtain competitive advantage over others.

In writing- means by first-class United States Mail, by email, by facsimile transmission, or by other standard electronic means producing written text.

Page- means one sheet of paper if records are produced in hard-copy form, regardless of what size the page may be.

General

In accordance with the FOIA, the public has the right to reasonable access to public records. The FOIA provides that **it is the responsibility of a public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records.** All requests to the University for Public Records as defined under the FOIA shall be processed in the manner prescribed in these rules.

The FOIA generally exempts the University from statutory coverage except in certain limited respects. **The University is covered by the FOIA only to the extent that requests relate to “the expenditure of public funds” 29 Del. C. §10002(d). Public funds are “those funds derived from the State or any political subdivision of the State.” 29 Del. C. §10002(f).**

Decisions entrusted to the University under these rules shall be made by the University’s General Counsel, or his or her designee.

Availability of Records

The University shall provide reasonable access and facilities for reviewing public records during regular business hours.

The University shall produce public records unless such records or portions of records are determined by the University to be confidential in accordance with **Requests for Confidentiality** section in these rules or otherwise exempted from disclosure as records deemed non-public pursuant to the FOIA.

The University reserves the right to deny any request for public records in part or in whole if the request does not comply with these rules or the provisions of the FOIA.

Form of Request

A request for access to public records shall be made in writing addressed to:

Office of the General Counsel

Delaware State University

Dover, DE 19901

Fax number: (302) 857-6003 or via email: legalaffairs@desu.edu

Sufficient detail in terms of the records being requested shall be provided in order to enable the University to locate the records with reasonable effort. The University shall make every reasonable effort to assist the requestor in identifying the public record being sought. The request may be denied in part or in full and returned to the requestor for any of the following reasons:

- The request is not in writing;
- The request does not adequately describe the requested records;
- The request requires the University to perform research, to assemble information, or to generate a document; or
- The request does not comply with any other requirement in these rules.

University Response to Requests

The University shall make every reasonable effort to determine as soon as possible, but not later than fifteen business days after the receipt of an appropriate request submitted in the form prescribed in the previous section of these rules, whether it can fulfill the request; and, if so, shall either grant or deny access to public records described in the request. The actual disclosure of records shall follow promptly thereafter.

At its sole discretion, the University may have additional time beyond the fifteen business days provided for above when a request is for voluminous records, requires legal advice, or requests records in storage or archived. In any of these cases, the requestor shall be advised by the University, within fifteen business days after receipt of the request, of the need for additional time. Such additional time provided for in this section shall be reasonable.

Public records shall be produced by making the original versions or true and accurate copies available for inspection at a specified time and place at the University, provided that any fees associated with production are paid as provided in the Fees for the Production of Public Records of these rules. Should the requestor wish to receive copies of public records in electronic or hard-copy format, then the University shall produce such copies in lieu of making them available for inspection, provided that any fees associated with production are paid.

The University may deny a requestor access to a public record if the requestor has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the University. A denial under this subsection shall not restrict a requestor's entitlement to request a different record.

Fees for the Production of Public Records

Fees for the Production of Records in Hard-Copy Format

Under the FOIA, the University is entitled to charge a fee for the search, review, copying and mailing of public records. It shall be the University's standard practice to charge:

- A fee of one dollar (\$1.00) per page for each page of public records copied and produced in response to a request for access to public records under FOIA; and
- In the event that the search for public records requires an aggregated total of three hours or more of University employee time for search, review, copying and mailing, a charge calculated by multiplying the total number of hours of employee time required, minus three hours (3 hrs.), by the current hourly pay rate, plus benefits, of employee(s) who perform the service.
- **If the number of pages of public records produced is less than fifty and fewer than three hours of work are required to search, review, copy and mail them, it shall be the University's standard practice not to levy any charge.**

Fees for the Production of Public Records in Electronic Format

If public records are produced in electronic form rather than hard-copy form, it shall be the University's standard practice to charge fees for data produced and reasonable personnel costs associated with search, review, copy, and conversion of records into transmittable form.

If the content of public records in electronic form is less than one (1) megabyte and requires fewer than three hours (3hrs.) of work to search, review, copy and convert, then, except when it places an unreasonable burden on the University, it shall be the University's standard practice not to levy any charge.

If the content of public records in electronic form is one megabyte or more, it shall be the University's standard practice to charge fees in accordance with the following schedule:

1. For between one (1) megabyte of data and less than ten (10) megabytes of data: twenty dollars (\$20.00)
2. For between (10) megabytes of data and less than one hundred (100) megabytes of data: fifty dollars (\$50.00).
3. For between one hundred (100) megabytes of data and less than one (1) gigabyte of data: one hundred dollars (\$100.00).
4. For one (1) gigabyte or more of data: two hundred dollars (\$200.00).
5. In the event that the search for public records requires an aggregated total of three hours or more of University employee time for search, review, copying and conversion, it shall be the University's standard practice to charge, in addition to the appropriate charge specified above, a fee calculated by multiplying the total number of hours of employee

time required, minus three hours (3 hrs.), by the current hourly pay rate, plus benefits, of employee(s) who perform the service.

Electronic Copying: If the University transmits public records electronically by copying them onto a CD-ROM, Flash Drive, or other portable device, it shall be the University's standard practice to charge in addition to the charge specified above, an additional fee of ten dollars (\$10.00) per ten (10) megabytes of data transmitted.

Choice of Format: The University retains sole discretion to determine whether public records are produced in hard-copy form, or electronically, or in some combination of hard-copy and electronic forms.

Payment of Fee: In cases in which the University charges a fee, the University shall provide advance notice to the requestor of the fee to be charged and ask whether the requestor wishes to proceed with the request. If the fee to be charged exceeds fifty dollars (\$50.00), then the University may require a payment of the fee before the University complies with the request.

Reduction or Waiver of Fee:

The University, at its sole discretion, may waive or reduce any fee otherwise chargeable under these rules if the University determines in its sole discretion that the public interest would be served thereby.

Upon a showing by the person requesting public records that the person receives public assistance or is unable to pay because of indigence, it shall be the University's standard practice to waive the first one hundred dollars (\$100.00) of any fee to be charged.

Requests for Confidentiality

A record may be determined to be confidential if either (i) it comes within any of the categories of records deemed exempt from the FOIA under 29 Del. C. § 10002(g), (ii) its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained, or (iii) it is deemed confidential pursuant to some other statute or regulation.

A person may request that certain records or portions of records maintained by or submitted to the University be held confidentially.

The University may determine that a document is entitled to confidential treatment if all of the following criteria are met:

- Reasonable measures to protect the confidentiality of the document and an intention to continue to take such measures have been satisfactorily shown;
- The document is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than a court enforced order) without prior consent; and
- No statute specifically requires disclosure of the information.

If the University determines that a document contains trade secrets or commercial or financial information and it is exempt from disclosure under 29 Del. C. §10002(g) (2), the document shall be deemed confidential until such time as the basis for a determination of confidentiality changes.

Responsibility

University General Counsel.