



SPONSOR: Sen. Townsend & Rep. Romer

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 355

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE FREEDOM OF INFORMATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 10001, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner ~~so that our~~ citizens shall to enable the public to have the opportunity to observe the performance of public officials and to monitor the decisions that are made by ~~such~~ public officials in formulating and executing public policy; and further, it is vital that ~~citizens~~ the public have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the ~~citizens of this State~~ public, this chapter is adopted, and ~~shall~~ must be construed.

Section 2. Amend § 10002, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10002. Definitions.

For purposes of this chapter:

(a)(1) “Agenda” ~~shall include but is not limited to~~ means a general statement of the major issues expected to be discussed at a public meeting, ~~as well as a statement of intent to hold an executive session and the specific ground or grounds therefor under § 10004(b) of this title.~~ meeting.

(b)(2) “Anchor location” means the physical location within the geographic jurisdiction of ~~the~~ a public body that is open to the public and at which 1 or more members of ~~a~~ the public body attend a virtual meeting.

(c)(3) “Caucus” means members of the House of Representatives or the Senate, of the same political party, who assemble to discuss matters of public business.

(d)(4) “Disability” means as defined in § 4502 of Title 6.

(e)(5) “Electronic” means as defined in § 12A-102 of Title 6.

(6) “Electronic communications” means a transmission of information that is electronically recorded, including emails, text messages, instant messages, video conferencing, and recorded messages.

(7) “Executive session” means a meeting or part of a meeting that is closed to the public under § 10004(b) and (c) of this title.

~~(f)~~(8) “FOIA” means the Freedom of Information Act under this chapter.

~~(g)~~(9) “FOIA coordinator” shall mean means the person designated by the Cabinet Secretary, school district superintendent, local government head, Chair, or equivalent executive officer of the a public body to receive and process FOIA requests.

~~(h)~~(10) “FOIA request” or “request” means a request to inspect or copy public records pursuant to under § 10003 of this title.

~~(i)~~(11) “FOIA Request Form” request form” means the form promulgated adopted by the Office of the Attorney General upon on which requests for public records may be made.

(12) “Invasion of personal privacy” means the disclosure of information that does not pertain to a legitimate matter of public concern and which would be highly offensive to a reasonable person if disclosed.

(13)a. “Legislative employee” means an individual employed by the House of Representatives, Senate, Division of Legislative Services, or Office of the Controller General.

b. “Legislative employee” includes all of the following:

1. Full and part-time staff.

2. Per diem staff.

3. Legislative Fellows.

4. Interns.

5. An individual with whom the General Assembly, House of Representatives or a caucus of the House of Representatives, Senate or caucus of the Senate, Division of Legislative Services, or Office of the Controller General has a contractual relationship for the provision of legislative services.

~~(j)~~(14)a. “Meeting” means the formal or informal gathering of a quorum of the members of any a public body for the purpose of discussing or taking action on public business.

b. “Meeting” includes each gathering of a quorum of the Board of Trustees of the University of Delaware or of a quorum of the Board of Trustees of the Delaware State University.

c. “Meeting” does not include a gathering of a subcommittee of the Board of Trustees of the University of Delaware or the Board of Trustees of the Delaware State University, or a gathering of less than a quorum of the

members of the Board of Trustees of the University of Delaware or Board of Trustees of the Delaware State University.

(15) "Personnel file" means a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to such other traditional personnel actions.

(16) "Political subdivision of this State" means a county, municipality, school district, public corporation, authority, or other entity of this State authorized by law to impose taxes or spend public funds.

~~(17)a.~~ "Public body" ~~means, unless specifically excluded,~~ means any regulatory, administrative, advisory, executive, ~~appointive~~ appointive, or legislative body of the this State, or of any political subdivision of the this State, including, but not limited to, including any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and board, committee, subcommittee, legislative committee, association, group, panel, ~~council~~ council, or any other entity or body established by an act of the General Assembly of the State, Assembly, or established by any entity or body established by the General Assembly of the State, Assembly, or appointed by any body entity, body, or public official of the State this State or of any political subdivision of this State, or otherwise empowered by any state governmental entity, which: entity or body of this State or entity or body of any political subdivision of this State that meets any of the following:

~~(1)~~1. Is supported in whole or in part by any public funds; ~~or funds.~~

~~(2)~~2. Expends or disburses any public funds, including grants, gifts gifts, or other similar disbursements and distributions; ~~or expenditures or disbursements.~~

~~(3)~~3. Is impliedly or specifically charged by any other public official, entity, body, or agency to advise or to make reports, investigations investigations, or recommendations.

b. "Public body" shall ~~does~~ not include any caucus of the House of Representatives or Senate of the State. a caucus.

c. "Public body" shall ~~include~~ includes all of the following:

1. any Any authority created under Chapter 14 of Title 16.

2. The Board of Trustees of the University of Delaware.

3. The Board of Trustees of the Delaware State University.

~~(f) "Public body," "public record" and "meeting" shall not include activities of the University of Delaware and Delaware State University, except that the Board of Trustees of both universities shall be "public bodies," university documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of~~

Trustees of either institution shall be a "meeting." Additionally, any university request for proposal, request for quotation, or other such document soliciting competitive bids for any contract, agreement, capital improvement, capital acquisition or other expenditure proposed to involve any amount or percentage of public funds by or on behalf of the university shall indicate on the request for proposal or other such document that it relates to the expenditure of public funds.

(m)(18) "Public business" means any matter over which the a public body has supervision, control, jurisdiction jurisdiction, or advisory power.

(n)(19) "Public funds" are those means funds derived from the this State or any political subdivision of the this State.

(o)(20)a. "Public record" is means information of any kind, a record that meets any of the following:

1. Is owned, made, used, retained, received, produced, composed, drafted drafted, or otherwise compiled or ~~collected~~, collected by any public body, body.

2. relating Relates in any way to public business, or in any way of business, public interest, or public purpose.

3. 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.

b. "Public record" does not include a record not subject to disclosure under § 10002A of this title.

For purposes of this chapter, the following records shall not be deemed public: [Transferred to § 10002A of this title.]

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this 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, pretrial and presentence 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 the person's 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 the 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 § 10004(f) of this title with respect to release of minutes of executive sessions, any record of discussions held in executive session pursuant to § 10004(b) and (c) of this title;~~

~~(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;~~

~~(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used;~~

~~(13) Any records in the possession of the Department of Correction where disclosure is sought by an inmate in the Department's custody;~~

~~(14) Investigative files compiled or maintained by the Victims' Compensation Assistance Program;~~

~~(15) Any photographs, video recordings or audio recordings of a postmortem examination in the possession of the Division of Forensic Science;~~

~~(16) Emails received or sent by members of the Delaware General Assembly or their staff;~~

~~(17) a. The following records, which, if copied or inspected, could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual:~~

~~1. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures.~~

~~2. Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records of mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are used or stored, arenas, stadiums, waste and water systems, electric transmission lines and~~

143 substations, high-pressure natural gas pipelines and compressor stations, and telecommunications networks
144 facilities and switching equipment, the disclosure of which would reveal the building's or structure's internal
145 layout, specific location, life, safety and support systems, structural elements, surveillance techniques, alarm
146 or security systems or technologies, operational and transportation plans or protocols, or personnel
147 deployments. Records that disclose the substances being used or stored on a given piece of property are public
148 records; however, records which disclose the specific location on that property of the substances being used or
149 stored may be disclosed only if the chief administrative officer of the agency from which the record is
150 requested determines that disclosure will not jeopardize the security of any structure owned by the State or
151 any of its political subdivisions, or will not facilitate the planning of a terrorist attack, or will not endanger the
152 life or physical safety of an individual.

153 3. Records of any building or structure operated by the State or any of its political subdivisions, the
154 disclosure of which would reveal the building's or structure's life, safety and support systems, surveillance
155 techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or
156 personnel deployments.

157 4. Records prepared to prevent or respond to emergency situations identifying or describing the
158 name, location, pharmaceutical cache, contents, capacity, equipment, physical features or capabilities of
159 individual medical facilities, storage facilities, or laboratories established, maintained or regulated by the State
160 or any of its political subdivisions.

161 5. Those portions of records assembled, prepared or maintained to prevent, mitigate or respond to
162 criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety.
163 The only items that are protected from disclosure by this paragraph are:

164 A. Specific and unique vulnerability assessments or specific and unique response or deployment
165 plans, including compiled underlying data collected in preparation of or essential to the assessments or to
166 the response or deployment plans; and

167 B. Records not subject to public disclosure under federal law that are shared by federal or
168 international agencies and information prepared from national security briefings provided to state or local
169 government officials related to domestic preparedness for criminal acts against United States citizens or
170 targets.

171 6. Nothing in this subsection shall be deemed to prohibit the disclosure of information necessary to
172 comply with the requirements of Chapter 8 of Title 26, the Underground Utility Damage Prevention and
173 Safety Act.

174 7. Information technology (IT) infrastructure details, source code, logical and physical design of IT
175 systems and interfaces, detailed hardware and software inventories, network architecture and schematics,
176 vulnerability reports, and any other information that, if disclosed, could jeopardize the security or integrity of
177 an information and technology system owned, operated or maintained by the State or any public body subject
178 to the requirements of this chapter.

179 b. Nothing in this paragraph shall interfere with the right of any committee of the General Assembly to
180 hear information in the committee at the request of the committee chair or, if appropriate, to hear information in an
181 executive session of the committee, or to subpoena information pursuant to § 705 of this title;

182 (18) a. Any military service discharge document or documents, a discharge, separation notice, certificate of
183 service, report of transfer or discharge, or any other notice or document which is evidence of severance or transfer from
184 military service and which contains a service record from the armed forces of the United States, or any document that
185 purports to represent a notice of separation from or service in any armed forces of the United States including but not
186 limited to the United States Department of Defense, DD Form 214, of a veteran of the armed forces of the United
187 States, which has been heretofore recorded at a county recorder of deeds. Such document or documents may only be
188 disclosed in accordance with the provisions of paragraph (o)(17)b. of this section.

189 b. *Access to authorized persons.* — The following persons are permitted to view or reproduce recorded
190 military service discharge documents:

- 191 1. The veteran subject of the discharge;
- 192 2. The spouse or child of a veteran, with consent of the veteran;
- 193 3. If the veteran is deceased, a survivor or heir of the veteran who may be eligible to claim any type
194 of benefit by virtue of the veteran's service in the military;
- 195 4. A person with a signed and notarized authorization from the veteran;
- 196 5. A county, state or federal officer assisting the veteran or veteran's family with a veteran's benefit
197 application;
- 198 6. Anyone authorized by an order from a Delaware court, to view or copy the document; or

199 7. Government agencies, including courts, that have an interest in assisting the veteran subject to the
200 military service discharge record or in assisting the beneficiaries of the deceased veteran subject to the
201 military service discharge record in obtaining a benefit.

202 ~~c. Any document referenced in paragraph (o)(18)a. of this section shall be deemed a public record upon~~
203 ~~the passage of 70 years from the date of the subject veteran's separation or discharge from service; or~~

204 ~~(19) Any communications between a member of the General Assembly and that General Assembly member's~~
205 ~~constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's~~
206 ~~constituent, or communications between members of the General Assembly.~~

207 (21) "Record" means information that meets any of the following:

208 a. Is inscribed on a tangible medium.

209 b. Is stored in an electronic or other medium and retrievable in perceivable form.

210 ~~(p)(22)~~ "Requesting party" shall mean the person filing the means the person making a FOIA request.

211 ~~(q)(23)~~ "State of emergency" means as defined in § 3102 of Title 20.

212 ~~(+)(24)a.~~ "Virtual meeting" means a meeting of a public body that 1 or more members attend through the use
213 of an electronic means of communication.

214 b. "Virtual meeting" does not include a meeting under § 10006A(a)(1) of this title.

215 Section 3. Amend Chapter 100, Title 29 of the Delaware Code by making deletions as shown by strike through and
216 insertions as shown by underline as follows:

217 § 10002A. Records not subject to disclosure.

218 The following records are not subject to disclosure under § 10003 of this title:

219 (1) Any personnel, medical, or pupil file, the disclosure of which would constitute an invasion of personal
220 privacy under this chapter or under any State or federal law as it relates to personal privacy.

221 (2) Trade secrets and commercial or financial information that is of a privileged or confidential nature.

222 (3)a. Investigatory files compiled for civil or criminal law-enforcement purposes, including pending
223 investigative files and pretrial and presentence investigations, but only if the public body makes a finding, and provides
224 the finding and an explanation for the reasoning of the public body's finding in the public body's response under §
225 10003(h) of this title, that one or more of the following apply:

226 1. Disclosure could reasonably be expected to interfere with enforcement proceedings.

227 2. Disclosure would deprive a person of a right to a fair trial or an impartial adjudication.

228 3. Disclosure could reasonably be expected to constitute an unwarranted invasion of personal
229 privacy.

230 4. Disclosure could reasonably be expected to disclose the identity of a confidential source.

231 5. Disclosure would reveal techniques and procedures for law enforcement investigations or
232 prosecutions, or would reveal guidelines for law enforcement investigations or prosecutions, and disclosure
233 could reasonably be expected to risk circumvention of law enforcement investigations or prosecutions.

234 6. Disclosure could reasonably be expected to endanger the life or physical safety of any individual.

235 b. Child custody and adoption files, if a criminal complaint is not at issue.

236 (4) Criminal files and criminal records, if disclosure could constitute an invasion of personal privacy.

237 a. Any person may, on proof of identity, obtain a copy of that person's personal criminal record. All other
238 criminal files and criminal records are closed to public scrutiny.

239 b. An agency holding criminal records may, before release, redact any information that would disclose
240 the names of witnesses, intelligence personnel, or confidential informants, or any other information of a privileged
241 and confidential nature.

242 (5) Intelligence files compiled for law-enforcement purposes, if disclosure could endanger local, state, or
243 national welfare or security.

244 (6) Records specifically exempted from public disclosure by statute or common law, including records
245 exempted from public disclosure by executive privilege. For purposes of a claim of executive privilege under this
246 paragraph (6), the following apply:

247 a. The privilege is held by the Governor.

248 b. The privilege protects the Governor's deliberative and mental processes.

249 c. The privilege applies to communications to or from the Governor and materials prepared by or for the
250 Governor.

251 d. The privilege is a qualified privilege. The initial burden of proof under § 10005(c) or (e)(5) of this title
252 is on the Governor to state a prima facie case for assertion of the privilege. If a prima facie case is made under §
253 10005(c) or (e)(5) of this title, the burden of proof shifts to the petitioner or plaintiff to demonstrate the reasons
254 why the need for disclosure outweighs the Governor's interest in nondisclosure.

255 (7) [Reserved.]

256 (8) Records involving labor negotiations or collective bargaining. This paragraph (8) does not apply to a
257 contract or other legal agreement that is the result of labor negotiations or collective bargaining, if the contract or other
258 legal agreement declares rights or imposes obligations on this State or a political subdivision of this State.

259 (9) Records pertaining to pending or potential litigation that are not records of a court.

260 (10) Subject to § 10004(f)(2) of this title with respect to release of minutes of an executive session, a record of
261 discussions held in executive session.

262 (11)a. Except as provided by paragraph (11)b. of this section, records that disclose the identity or address of
263 an individual holding a permit to carry a concealed deadly weapon.

264 b. Records relating to a permit to carry a concealed deadly weapon must be made available to law-
265 enforcement officers.

266 (12) Records of a public library which contain the identity of a patron of the public library and the books,
267 documents, films, recordings, or other property of the library that the patron has used.

268 (13) Records in the possession of the Department of Correction, if disclosure is sought by an inmate in the
269 Department's custody.

270 (14) Investigative files compiled or maintained by the Victims' Compensation Assistance Program under
271 Chapter 90 of Title 11.

272 (15) Photographs, video recordings, or audio recordings of a postmortem examination in the possession of the
273 Division of Forensic Science.

274 (16)a. Except as provided by paragraph (16)b. of this section, an electronic communication received or sent by
275 a member of the General Assembly or a legislative employee.

276 b. If a requesting party makes a request for electronic communications to a public body other than the
277 General Assembly and the public body denies the request for an electronic communication because the electronic
278 communication was received by a member of the General Assembly or a legislative employee, the electronic
279 communication received by a member of the General Assembly or a legislative employee is subject to disclosure
280 under § 10003 of this title if all of the following apply:

281 1. Within 5 business days of a denial under paragraph (16)b.1. of this section, the requesting party
282 requests the public body to seek approval of each member of the General Assembly and each legislative
283 employee who received the electronic communication to waive the exemption under paragraph (16)a. of this
284 section. Within 5 business days of the request under this paragraph (16)b.1, the public body shall provide

notice of the request to the General Assembly's FOIA Coordinator and each member of the General Assembly and each legislative employee who received the electronic communication.

2. Each member of the General Assembly and each legislative employee who received the electronic communication waives the exemption under paragraph (16)a. of this section.

A. If each member of the General Assembly and each legislative employee who received the electronic communication does not waive the exemption under paragraph (16)a. of this section, the public body may not disclose the electronic communication.

B. The General Assembly's FOIA Coordinator shall coordinate the responses from each member of the General Assembly and each legislative employee who received the electronic communication.

C. Within 5 business days of the public body's notice under paragraph (16)b.1. of this section, the General Assembly's FOIA Coordinator shall provide a statement, under oath, as to the response of each member of the General Assembly and each legislative employee who received the electronic communication regarding the requesting party's request under paragraph (16)b.1. of this section.

D. A waiver under paragraph (16)b.2. of this section does not waive the exemption under paragraph (16)a. of this section for an electronic communication or other record that is not subject to the request under paragraph (16)b.2. of this section.

(17)a. Records which, if copied or inspected, could jeopardize the security of any structure owned by this State or any political subdivision of this State, facilitate the planning of a terrorist attack, or endanger the life or physical safety of an individual, including all of the following:

1. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures.

2. Building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are used or stored, arenas, stadiums, waste and water systems, electric transmission lines and substations, high-pressure natural gas pipelines and compressor stations, and telecommunications networks facilities and switching equipment, the disclosure of which would reveal the internal layout, specific location, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, personnel deployments, or life, safety, or support systems, except that the following are public records:

315 A. Records that disclose the substances being used or stored on a specific property.

316 B. Records that disclose the specific location on that property of the substances being used or
317 stored when the chief administrative officer of the agency from which the record is requested determines
318 that disclosure will not jeopardize the security of any structure on that property, will not facilitate the
319 planning of a terrorist attack, and will not endanger the life or physical safety of an individual.

320 3. Records of any building or structure operated by this State or a political subdivision of this State,
321 the disclosure of which would reveal the building's or structure's surveillance techniques, alarm or security
322 systems or technologies, operational and evacuation plans or protocols, personnel deployments, or life, safety,
323 or support systems.

324 4. Records prepared to prevent or respond to emergency situations identifying or describing the
325 name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of
326 individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by this
327 State or a political subdivision of this State.

328 5. The following records assembled, prepared, or maintained to prevent, mitigate, or respond to
329 criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety:

330 A. Specific and unique vulnerability assessments or specific and unique response or deployment
331 plans, including compiled underlying data collected in preparation of or essential to the vulnerability
332 assessments or response or deployment plans.

333 B. Records that are not subject to public disclosure under federal law that are shared by federal
334 or international agencies and information prepared from national security briefings provided to state or
335 local government officials related to domestic preparedness for criminal acts against United States
336 citizens or targets.

337 6. Information technology (IT) infrastructure details, source code, logical and physical design of IT
338 systems and interfaces, detailed hardware and software inventories, network architecture and schematics,
339 vulnerability reports, and any other information that, if disclosed, could jeopardize the security or integrity of
340 an IT system owned, operated, or maintained by this State or a public body subject to the requirements of this
341 chapter.

342 b. Nothing in this paragraph (17) prohibits the disclosure of records necessary to comply with a request of
343 the Chair of a committee of the House of Representatives or the Senate or a joint committee of the General

Assembly or a subpoena issued under § 705 of this title or under the rules of the General Assembly or of a House of the General Assembly.

c. Nothing in this paragraph (17) prohibits the disclosure of records necessary to comply with the requirements of Chapter 8 of Title 26, the Underground Utility Damage Prevention and Safety Act.

(18)a. Any military service record, including a discharge record, discharge notice, separation notice, certificate of service, report of transfer or discharge, and any other record which is evidence of severance or transfer from military service and which contains a service record from the armed forces of the United States, or any record that purports to represent a notice of separation from or service in any armed forces of the United States, including the United States Department of Defense, DD Form 214, of a veteran of the armed forces of the United States, which is recorded with a county recorder of deeds. A record under this paragraph (18)a. may only be disclosed under paragraph (18)b. of this section.

b. Access to authorized persons. — All of the following are permitted to view or reproduce a record under paragraph (18)a. of this section:

1. The veteran who is the subject of the record.

2. If the veteran is living, the spouse or child of the veteran who is the subject of the record, with consent of the veteran.

3. If the veteran is deceased, a survivor or heir of the veteran who is the subject of the record that may be eligible to claim any type of benefit by virtue of the veteran's service in the military.

4. A person with a signed and notarized authorization from the veteran who is the subject of the record.

5. A county, state, or federal officer assisting with a veteran's benefit application for the veteran who is the subject of the record or that veteran's family.

6. Anyone authorized by an order from a court of this State, to view or copy the record.

7. Government agencies, including courts, that have an interest in assisting the veteran who is the subject of the record or in assisting the beneficiaries of the deceased veteran who is the subject of the record in obtaining a benefit.

c. A record under paragraph (18)a. of this section is a public record after the passage of 70 years from the date of the separation or discharge from service of the veteran who is the subject of the record.

(19) A record of communication that meets any of the following:

a. Is between a member of the General Assembly, or a legislative employee, and the member's constituent.

b. Is by a member of the General Assembly, or a legislative employee, on behalf of the member's constituent.

c. Is between members of the General Assembly, between legislative employees, or between members of the General Assembly and legislative employees.

(20) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions regarding any of the following:

a. Admission to any educational agency or institution.

b. An application for employment or promotion.

c. Receipt of an honor or honorary recognition.

(21)a. Unless it has been publicly released, published, copyrighted, or patented, information of a proprietary nature produced or collected by or for faculty or staff of a public institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, including study or research performed in conjunction with a government or private entity.

b. Paragraph (21)a. of this section does not include the institution's financial or administrative records.

(22)a. Information maintained in connection with fundraising activities by or for a public institution of higher education that would reveal any of the following relating to an identifiable donor or prospective donor:

1. Personal fundraising strategies.

2. Wealth assessments.

3. Estate, financial, or tax planning information.

4. Health-related information.

5. Employment, familial, or marital status information.

6. Email address or facsimile, telephone, or cell phone number.

7. Birth date or social security number.

b. Nothing in paragraph (22)a. of this section may be construed to authorize the withholding of information relating to any of the following:

1. The amount, date, purpose, and terms of a pledge or donation.

2. Unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation, the identity of the donor.

c. Nothing in paragraph (22)a. of this section protects any of the following from disclosure:

1. The identities of sponsors providing grants to or contracting with the public institution of higher education for the performance of research services or other work.

2. The terms and conditions of grants or contracts under paragraph (22)c.1 of this section.

Section 4. Amend § 10003, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10003. ~~Examination and copying of~~ Access to public records.

(a)(1) ~~All public records shall be~~ A public body shall make a public record requested by a requesting party open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body. Reasonable hours.

a. A public body may not deny reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. the public record requested.

b. On request of the requesting party, a public body may provide the requesting party with copies of the public record requested rather than require the requesting party to inspect and copy the public record.

c. If the public record requested is in electronic form, the public body shall, at the request of the requesting party, provide the public record in the public record's native file format. If the public body is unable to fulfill the request, the public body shall provide the public record in another electronic format and state a reason under paragraph (a)(2) of this section that the native file format cannot be provided.

d. If the public record requested is in hard copy or stored in an electronic format that is not searchable, the public body shall, at the request of the requesting party, make an electronic copy of the public record using optical character recognition and provide the requesting party with the electronic copy. If the public body is unable to fulfill the request, the public body shall provide the public record in another electronic format and state a reason under paragraph (a)(2) of this section that the electronic copy cannot be provided.

(2) A public body is not required to produce a public record in a format required under paragraph (a)(1)c. or (a)(1)d. of this section if one of the following apply:

a. Producing the record in a format required under paragraph (a)(1)c. or (a)(1)d. of this section violates the terms of any copyright or licensing agreement between the public body and a third party or results in the release of a third party's proprietary information.

b. After making reasonable inquiries, the public body determines any of the following:

432 1. It is not technologically or practically feasible to permanently remove information that the public
433 body is required or allowed to withhold within a format required under paragraph (a)(1)c. or (a)(1)d. of this
434 section.

435 2. It is not technologically or practically feasible to provide a copy of the public record in a format
436 required under paragraph (a)(1)c. or (a)(1)d. of this section.

437 3. The public body would be required to create additional programming or functionality in the public
438 body's existing software to provide a copy of the public record in a format required under paragraph (a)(1)c.
439 or (a)(1)d. of this section.

440 ~~(b) All state agencies and public bodies shall implement and promulgate~~ A public body shall adopt and implement
441 a policy for addressing requests made under the Freedom of Information Act. this chapter The public body shall adopt the
442 policy under § 10113(a) of this title.

443 ~~(c)(1) All state agencies and public bodies~~ A public body shall develop a web portal a website for receiving FOIA
444 requests through the internet. Such portals shall Internet. The public body's website must utilize the standard FOIA request
445 form promulgated by the Attorney General. form.

446 (2) A public body shall publish on the website required under paragraph (c)(1) of this section, or publish a link
447 to another website containing, all of the following:

448 a. A proposed or final order issued related to a case decision under subchapter III of Chapter 101 of this
449 title.

450 b. A regulation adopted under § 10113(b)(1), (b)(2), or (b)(3) of this title.

451 c. Administrative staff manuals and memorandums that govern the public body's delivery of services or
452 interactions with the public.

453 d. Public records that have been disclosed under this section and meet one or more of the following:

454 1. Due to the nature of the subject matter, the public body determines are likely to become the subject
455 of subsequent requests for substantially the same public records.

456 2. Have been requested 2 or more times in the previous 90 days.

457 e. The document required to be maintained under paragraph (g)(3) of this section. The public body shall
458 publish the information in the document required to be maintained under paragraph (g)(3) of this section as
459 follows:

460 1. The public body shall redact the contact information of a requesting party before publishing the
461 information related to the requesting party's request.

462 2. The public body shall publish the name of the requesting party.

463 3. Subject to paragraphs (c)(2)e.1. and (c)(2)e.2. of this section, the public body shall publish the
464 information in the document required to be maintained under paragraph (g)(3) of this section within 15
465 business days of the date of final disposition of a FOIA request and maintain the information on the website
466 required under this subsection for at least 1 year.

467 ~~(d)(1) All state agencies and public bodies are to~~ A public body shall provide reasonable assistance to the public in
468 identifying and locating public records to which they are entitled access, and all records held by the agency are “public
469 records” records. A record held by a public body is a public record to which the public ~~should have~~ is entitled access unless
470 ~~they fall within the scope of enumerated exceptions in § 10002 of this title.~~ the record is not subject to disclosure under §
471 10002A of this title.

472 ~~(2)a. All public bodies~~ A public body in the executive branch of state government that ~~are~~ is subject to the
473 ~~provisions of this chapter and are~~ is required by statute, regulation, or other established policy to publish an annual or
474 biennial report, report shall electronically post ~~copies of these reports~~ the report to a single designated State website
475 approved by the Secretary of State.

476 ~~b. Electronic~~ Except as provided in paragraph (d)(2)c. of this section, electronic notification of the
477 availability of ~~these reports~~ the report on the designated State website ~~shall fulfill~~ fulfills a public body’s duty to
478 publish and provide ~~these reports to the Governor, General Assembly, or other state agencies or state officials.~~ the
479 report.

480 c. A public body shall provide the report to the General Assembly or a member of the General Assembly
481 as required by statute, resolution, regulation, or other established policy.

482 ~~(e) All state agencies and public bodies~~ A public body shall provide a mailing address for receiving FOIA requests
483 through the U.S. mail.

484 ~~(f) Form of request.~~ —

485 ~~(1) All FOIA requests shall~~ A FOIA request must be made in writing to the public body and be delivered to
486 the public body in person, by U.S. mail, by ~~e-mail,~~ email, by fax, or ~~online in accordance with the provisions~~
487 ~~hereunder.~~ through the website required under subsection (c) of this section.

488 a. A FOIA requests request may be submitted using the FOIA Request Form ~~promulgated by the Office~~
489 ~~of the Attorney General provided, however, that any~~ request form.

490 b. A public body may not deny a FOIA request that otherwise conforms with the policy hereunder shall
491 ~~not be denied~~ this subsection solely because the ~~FOIA request is not on the promulgated form.~~ FOIA request form.

c. ~~Copies of the FOIA request form may be obtained from the website of any state agency, school district, or other public body.~~ A public body shall make the FOIA request form available for use on the public body's website.

(2) ~~All requests shall~~ The requesting party shall adequately describe the ~~records~~ record sought in sufficient detail to enable the public body to locate ~~such records~~ the record with reasonable effort. The requesting party ~~shall~~ must be as specific as possible when requesting ~~records~~ a record.

(3) To assist the public body in locating the requested ~~records~~ record, the public body 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.

(g) *FOIA coordinator.* —

(1) Each public body shall designate a FOIA ~~coordinator~~ coordinator.

a. The FOIA coordinator ~~who~~ shall serve as the point of contact for FOIA requests and coordinate the public body's responses ~~thereto~~ to FOIA requests.

b. The public body shall place the name and contact information for the public body's FOIA coordinator ~~shall be identified~~ on the public body's website and ~~each public body~~ shall provide the name and contact information for ~~its~~ the public body's FOIA coordinator to the Attorney General.

c. The public body shall update ~~this information on its website and with the Attorney General~~ the information required under paragraph (g)(1)b. of this section within 20 ~~working~~ business days of any change in ~~its~~ the public body's FOIA coordinator or the FOIA coordinator's contact information.

d. The FOIA coordinator may designate other employees of the public body to perform specific duties and functions ~~hereunder~~ under this subsection.

(2) The FOIA ~~coordinator and/or his or her designee~~ working coordinator, in cooperation with other employees and ~~representatives~~ representatives of the public body, shall make ~~every~~ a reasonable effort to assist the requesting party in identifying the ~~records~~ record being sought, and to assist the public body in locating and providing the requested ~~records~~ record. The FOIA coordinator ~~and/or his or her designee will also~~ shall work to foster cooperation between the public body and the requesting party.

(3) ~~In addition to the foregoing responsibilities, the~~ The FOIA coordinator shall maintain a document tracking all FOIA requests. For each FOIA request, the document ~~shall~~ must include, at a minimum, the following information:

a. The requesting party's contact information, ~~information~~.

b. ~~the~~ The date the public body received the ~~request~~ FOIA request.

c. ~~the~~ The public body's response deadline, deadline to respond to the FOIA request under subsection (h) of this section.

d. ~~the~~ The date of the public body's response (including the reasons for any extension), response to the FOIA request and, if applicable, the reason for any extension of the deadline to respond to the FOIA request under subsection (h) of this section.

e. ~~the~~ The names, contact information information, and dates of correspondence with the individuals contacted in connection with requests, the FOIA request.

f. ~~the~~ The dates of review of records subject to the FOIA request by the public body, body.

g. ~~the~~ The names of individuals who conducted such reviews, the review under paragraph (g)(3)f. of this section.

h. ~~whether documents were made available,~~ Whether the public record was made available.

i. ~~the amount of copying and/or administrative fees assessed, and~~ The amount of each fee assessed to the requesting party under subsection (m) of this section.

j. ~~the~~ The date of the final disposition, disposition of the FOIA request.

(h) *Response to requests.* —

(1) The public body shall respond to a FOIA request as soon as possible, ~~but in any event within 15 business days after the receipt thereof, either by~~ possible but not later than 10 business days after receiving the FOIA request.
The public body may respond to a FOIA request by doing any of the following:

a. ~~providing~~ Providing the requesting party with access to the requested records, record.

b. ~~denying~~ Denying the requesting party access to the records or parts of them, or requested record if any of the following apply:

1. The denial is authorized under this chapter.

2. Subject to paragraph (h)(3)a. of this section, the request is unreasonably broad, unduly burdensome, intended to disrupt the essential functions of the public body, or is abusive. For purposes of this paragraph (h)(1)b.2.:

A. A request is unreasonably broad if the request uses omnibus terms unconnected to a specific record, date, individual, or subject matter.

B. A request is unduly burdensome if fulfilling the request would require the public body to produce an unreasonable amount of records or require the public body to dedicate an unreasonable amount of resources to fulfill the request, as demonstrated by specific facts provided by the public body.

C. A request is intended to disrupt the essential functions of the public body if the public body demonstrates by specific facts that the requesting party's conscious object is to do any of the following:

I. Engage in conduct disrupting the essential functions of the public body.

II. Cause disruption of the essential functions of the public body.

D. A request is abusive based on a pattern of conduct as evidenced by factors including:

I. The number of requests filed and the total number of pending requests.

II. The scope of the requests filed.

III. The nature, content, language, or subject matter of the requests.

IV. The nature, content, language, or subject matter of other oral and written communications to the public body from the requesting party.

c. Providing the requesting party with access to part of the requested record and, subject to paragraph (h)(3)a. of this section, denying the requesting party access to part of the requested record under paragraph (h)(1)b. of this section.

~~d. by advising~~ Advising the requesting party that additional time is needed because the FOIA request is for voluminous records, the FOIA request requires legal advice, or a record is in storage or archived.

(2) If access cannot be provided within 15 business days, the public body shall cite 1 or more of the reasons hereunder under paragraph (h)(1)d. of this section when explaining why more time is needed and provide a good-faith good faith estimate of how much additional time is required to fulfill the FOIA request.

(2)(3)a. If the public body denies a request in whole or in part, the public body's response shall must indicate the reasons for the denial. If the denial is for 1 or more of the reasons under paragraph (h)(1)b.2. of this section, the public body must include a summary of the facts that are the basis for the denial.

b. The public body shall not be is not required to provide an index, or any other compilation, as to for each record or part of a record record, or part of a record, that is denied.

(i) Requests for e-mail: records of electronic communications. —

(1) Requests for e-mail records shall be fulfilled by the public body A public body shall fulfill a FOIA request for a record of an electronic communication from its the public body's own records, if doing so can be accomplished by the public body with reasonable effort. If the public body determines that it cannot fulfill all or any portion of such the request, the public body shall promptly request that its the public body's information and technology personnel or custodians provide the e-mail records a record of an electronic communication to the public body.

(2) Before requesting the information and technology personnel or custodians to provide ~~e-mail records, a~~
~~record of an electronic communication,~~ the public body shall provide an itemized written cost estimate to the
requesting party, listing all charges expected to be incurred in retrieving ~~such records.~~ Upon a record of an electronic
communication. On receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify
the FOIA request.

(j) *Requests for other noncustodial records.* —

(1) ~~If all or any portion of a FOIA request seeks records~~ If a requesting party seeks a record controlled by the
public body but ~~are~~ not within its the public body's possession or ~~cannot otherwise be fulfilled by~~ the public body is
unable to fulfill the FOIA request with reasonable effort from the records it possesses, ~~then~~ in the public body's
possession, the public body shall promptly request that the relevant custodian provide the noncustodial ~~records~~ record
to the public body.

(2) Before requesting ~~any the~~ noncustodial ~~records,~~ record, the public body shall provide an itemized written
cost estimate to the requesting party, listing all charges expected to be incurred in retrieving ~~such records.~~ Upon the
noncustodial record. On receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or
modify the FOIA request.

(k) *Review by public body.* — ~~Prior to~~ Before disclosure, ~~records may be reviewed by~~ the public body may review
the record to ensure ~~that those records or portions of records~~ the record or portions of the record deemed nonpublic ~~may be~~
~~removed pursuant to § 10002 of this title or any other applicable provision of law.~~ are redacted under § 10002A of this title
or other law. In ~~reviewing the records, all documents shall be considered public records~~ reviewing the record, the record is a
public record unless ~~subject to 1 or more~~ of the exceptions set forth in ~~§ 10002 of this title or any other applicable~~
~~provision of law.~~ under § 10002A of this title or other law apply.

(l) *Hours of review.* — The public body shall provide reasonable access for the reviewing of public records by a
requesting party during regular business hours.

(m) *Fees.* — ~~Unless otherwise set forth in the Delaware Code or any applicable code of a county or municipal~~
~~public body, the following fees shall apply:~~ Except as provided under paragraph (m)(6) or paragraph (m)(7) of this section
or other law of this State or a political subdivision of this State, the following fees apply:

(1) *Photocopying and scanning fees.* — ~~In instances in which paper records are~~ If a paper record is provided
to the requesting ~~party,~~ photocopying party or scanning is required to provide paper records, the fees shall be are as
follows:

a. ~~Standard-sized, black and white copies: copies.~~ - ~~The~~ After the first 20 pages of standard-sized, black and white ~~copies material shall be~~ copies, which must be provided free of charge. ~~The charge, the~~ charge for copying ~~standard sized, standard-sized,~~ standard-sized, black and white public records for ~~copies over and above 20 shall be~~ is \$0.10 per ~~sheet (\$0.20 page and \$0.20 for a double-sided sheet).~~ page. This charge applies to copies on the following standard paper sizes: 8.5" x 11", 8.5" x 14", and 11" x 17". As used in this subsection, "standard-sized" means 8.5" x 11", 8.5" x 14", or 11" x 17".

b. ~~Oversized copies/printouts: copies or printouts.~~ - The charge for copying oversized public records shall be is as follows:

1. 18" x 22", \$2.00 per ~~sheet;~~ page.

2. 24" x 36", \$3.00 per ~~sheet; documents~~ page.

3. Documents larger than 24" x 36", \$1.00 per square foot.

c. ~~Color copies/printouts: copies or printouts.~~ - An additional charge of \$1.00 per ~~sheet will~~ page must 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.~~ page for oversized copies under paragraph (m)(1)b. of this section.

d. Scanning. - After the first 20 pages of paper records that are scanned into a format for electronic or facsimile delivery, which must be provided free of charge, the charge for scanning paper records into a format for electronic or facsimile delivery is \$0.05 per page and \$0.10 for a double-sided page.

(2) Administrative fees. - Administrative fees shall must be levied for ~~requests requiring a FOIA request that~~ requires more than 1 hour of staff time to process.

a. Charges Except as provided under paragraph (m)(2)b. of this section, charges for administrative fees may include staff time associated with processing FOIA requests, ~~including, without limitation:~~ including time spent doing any of the following:

1. ~~identifying records;~~ Identifying a record.

2. ~~monitoring file reviews;~~ Reviewing a record.

3. ~~and generating computer records (electronic or print-outs).~~ Generating photocopies or scans or producing the public record in a format required under paragraph (a)(1)c. or (a)(1)d. of this section.

4. ~~Administrative fees shall not include any cost associated with the public body's legal review of~~ Reviewing whether any portion of the requested records is or all of the requested record is exempt from FOIA; this chapter or other laws.

5. Making redactions of any portion of a record exempt from disclosure under this chapter.

b. A public body may not include in the administrative fees charged any cost for reviewing or redacting a record that is incurred while resolving issues of law that were raised while processing the FOIA request. When providing the itemized written cost estimate under paragraph (m)(2)d. of this section, the public body shall affirm that the costs prohibited by this paragraph (m)(2)b. are not included in the itemized written cost estimate.

c. The public body shall make ~~every~~ a reasonable effort to ensure that administrative fees are minimized, and may only assess such administrative charges as shall be reasonable that are reasonably required to process FOIA requests. In connection therewith, the the FOIA request. The public body shall minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.

d. ~~Prior to~~ Before fulfilling any a FOIA request that would require requires a public body to assess a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such the fees to the requesting party, listing all charges expected to be incurred in retrieving such records. Upon the record. On receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the FOIA request.

e. Administrative fees will must be billed to the requesting party per quarter hour. These charges will Administrative fees are to be billed at the current hourly pay grade (prorated grade, prorated for quarter hour increments) increments, of the lowest-paid employee capable of performing the service. Administrative fees will be are in addition to any other charges incurred under this section for copying fees. paragraph (m)(1) or paragraph (m)(3) of this section.

f. ~~When~~ If multiple FOIA requests are submitted by or on behalf of the requesting party in an effort to avoid incurring administrative charges, the public body may in its discretion aggregate staff time for all such the requests when computing fees hereunder. Notwithstanding the foregoing, any administrative fees.

g. ~~Freedom of Information Act policy~~ A FOIA policy adopted by a public body pursuant to under subsection (b) of this section hereunder may include provisions for the waiver of some or all of the above allowed administrative fees; provided that such fees if the waiver shall apply applies equally to a particular class of persons (i.e., nonprofit organizations). persons, such as nonprofit organizations.

(3) ~~Microfilm and/or or microfiche printouts.~~ — The After the first 20 pages of standard-sized, black and white material copied from microfilm and/or or microfiche shall be microfiche, which must be provided free of charge. The charge, the charge for microfilm and/or or microfiche printouts over and above 20 shall be is \$0.15 per sheet. page.

(4) *Electronically generated records.* — Charges for copying records maintained in an electronic format will be are calculated by the material costs involved in generating the copies (including but not limited to copies, including

the cost of a DVD, CD, or other electronic storage device if the records are copied onto a DVD, CD, or other electronic storage device.

(5) *Payment.* — The public body may require that all or any portion of the fees due hereunder to under this subsection be paid prior to before any service being service, other than the calculation of the administrative fees, is performed pursuant to under this section.

(6) A public body may charge a fee in an amount greater than the amount provided under this subsection if the FOIA request is from a person who is not a resident of this State and the public body has established a schedule for fees for a person who is not a resident of this State in the public body's policy enacted under subsection (b) of this section. A fee charged under this paragraph (m)(6) may not exceed 150% of the cost to fulfill the FOIA request for a person who is a resident of this State.

(7)a. A public body may not charge an administrative fee under paragraph (m)(2) of this section if all of the following apply:

1. The public record is not sought for commercial use by the requesting party or is not primarily in the commercial interest of the requesting party.

2. The requesting party is one of the following:

A. A representative of the news media.

B. An educational or noncommercial scientific institution whose purpose is scholarly or scientific research.

3. Disclosure of the public record is in the public interest because it is likely to contribute to public understanding of the operations of the public body.

b. For purposes of this paragraph (m)(7):

1. "A representative of the news media" means a person that gathers information of potential interest to a segment of the public, uses the person's editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

2. "News" means information that is about current events or information that would be of current interest to the public.

3. "News media" includes all of the following:

A. Television or radio stations broadcasting to the public at large.

B. A publisher of news that makes the publisher's products available for purchase or subscription by or for free to the general public.

C. An individual, if the individual can demonstrate an expectation of publication through an entity under paragraph (m)(7)b.3.A. or paragraph (m)(7)b.3.B. of this section, whether or not the individual is actually employed by the entity, through one of the following:

I. A contract with the entity.

II. The past publication record of the individual.

(8) A public body shall credit funds received under this subsection with an accounting code to indicate the funds are received under this subsection. The Division of Accounting shall designate an appropriate accounting code for use by a public body that is a state agency.

Section 5. Amend § 10004, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10004. Open meetings.

~~(a)(1) Every meeting of all public bodies shall be open to the public except when closed under subsections (b), (c), (d), and (h) of this section.~~ Except as provided under subsections (b), (c), (d), and (h) of this section, a meeting of a public body must be open to the public.

(2) A meeting that is open to the public under paragraph (a)(1) of this section must include time for public comment, unless the meeting is of a public body within the General Assembly which is governed by the rules of proceedings adopted under § 9 of ~~Art.~~ Article II of the Delaware Constitution.

a. The time allotted for public comment must provide a meaningful opportunity for the public to engage with the public body.

b. A public body may impose reasonable time, place, and manner restrictions on the length of the public comment period and the amount of time allotted for each public comment.

~~(b) A public body may call for enter into an executive session closed to the public pursuant to subsections (c) and (e) of this section, but only for the following purposes:~~ for any of the following reasons:

(1) Discussion of an ~~individual citizen's~~ individual's qualifications to hold a job or pursue ~~training unless the citizen~~ training, except if any of the following apply:

a. The individual requests ~~that such a~~ the meeting be open.

b. ~~This provision shall not apply to the~~ The discussion ~~is by a licensing board or commission which is subject to the provisions of a public body under § 8735 of this title, of title regarding an individual citizen's~~ individual's qualifications to pursue any profession or occupation for which a license must be issued by the public body ~~in accordance with Delaware law; under other law of this State.~~

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements, or sales or leases of real ~~property~~; property.

(3) Activities of any law-enforcement agency in ~~its~~ the law-enforcement agency's efforts to collect information leading to ~~criminal apprehension~~; the detention or arrest of an individual.

(4) ~~Strategy sessions, including those involving legal advice or opinion from an attorney at law, with respect to sessions regarding collective bargaining or pending or potential litigation, litigation, including a strategy session involving legal advice or opinion from an attorney, but only when if an open meeting would have an adverse effect on the bargaining or litigation position of the public body; body.~~

(5) Discussions by a public institution of higher education which would disclose the identity of ~~the a~~ contributor of a bona fide and lawful charitable contribution to the ~~public body whenever~~ public institution of higher education if public anonymity has been requested of the public body with respect to ~~said the~~ contribution by the ~~contributor~~; contributor.

(6) Discussion of the content of ~~documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;~~ a record that is not subject to disclosure under § 10002A of this title or other law.

(7) The hearing of a student disciplinary cases case, unless the student requests a public ~~hearing~~; hearing.

(8) The hearing of an employee disciplinary or dismissal cases case, unless the employee requests a public ~~hearing~~; hearing.

(9) Personnel matters in which the ~~names, competency and abilities~~ name, competency, and abilities of an individual ~~employees or students are~~ employee are discussed, unless the employee ~~or student~~ requests that ~~such a~~ the meeting be open.

(10) Matters in which the name, competency, and abilities of an individual student are discussed, unless the student requests the meeting be open.

(c) A If properly noticed under paragraph (e)(2) of this section, a public body may hold an executive session closed to the public upon on the affirmative vote of a majority of members present at a meeting that meeting of the public body.

(1) The vote on the question of holding an executive session shall must take place at a meeting of the public body which ~~shall be~~ is open to the ~~public~~; public and the results of the vote ~~shall be made public and shall must be~~ recorded in the minutes.

(2) The purpose of ~~such executive sessions shall be set forth~~ the executive session must be listed in the agenda and ~~shall~~ must be limited to the purposes ~~listed in~~ authorized under subsection (b) of this section.

(3) ~~Executive sessions may be held only for the discussion of public business, and all voting~~ Any vote on public business must take place at ~~a public~~ a meeting of the public body which is open to the public and the results of the vote ~~made public, recorded in the minutes.~~

(4) A member of a public body attending an executive session, or an individual permitted to attend an executive session by the public body, may not disclose information obtained from the executive session without authorization of the public body.

a. A violation of this paragraph (c)(4) is a class A misdemeanor.

b. It is an affirmative defense that the member or individual disclosed information obtained from the executive session to report a violation of law to an elected official or public body with jurisdiction to act on the violation of law.

(d) This section ~~shall not prohibit~~ does not prohibit the removal of ~~any person~~ an individual from a ~~public~~ meeting ~~who if the individual is wilfully and seriously disruptive of the conduct of such~~ the meeting.

(e) Notice of meeting -

(1) This subsection ~~concerning notice of meetings~~ does not apply to any of the following:

a. An emergency meeting which is necessary for the immediate preservation of the public peace, health, or safety, safety.

b. ~~or to the~~ The General Assembly.

(2) ~~All public bodies~~ A public body shall give public notice of ~~their~~ a meeting of the public body, including the public body's regular meetings and of their and, if applicable, the public body's intent to hold an executive session ~~closed to the public, session,~~ at least 7 calendar days in advance of before the meeting. The notice must include all of the following:

a. The agenda, if the agenda has been determined.

b. The date, time, and place of a meeting, including whether the meeting will be conducted under § 10006A of this title.

(3) An agenda provided under paragraph (e)(2) of this section is subject to change. Changes to an agenda may include any of the following:

a. Additional items, including an executive session, which arise at between the posting of the public body's agenda and the time of the public body's meeting.

b. The deletion of items, including an executive session.

(4) ~~All public bodies~~ A public body shall give public notice ~~of the type set forth in~~ under paragraph (e)(2) of this section ~~of for~~ any special or rescheduled meeting as soon as reasonably possible, ~~but in any event no possible but~~ not later than 24 hours before such the meeting.

a. ~~A special or rescheduled meeting shall be defined as one~~ As used in this paragraph (e)(4), “special or rescheduled meeting” means a meeting to be held less than 7 calendar days after the scheduling decision is made.

b. The public notice of a special or rescheduled meeting ~~shall~~ must include an explanation as to why the ~~notice 7 calendar days’ notice, as required by paragraph (e)(2) of this section~~ section, could not be given.

(5) ~~Public~~ The public notice required by this subsection ~~shall include, but not be limited to,~~ must include all of the following:

a. Conspicuous posting of ~~said the~~ notice at the principal office of the public body holding the ~~meeting, or if no such meeting, or if such an office exists does not exist,~~ at the place where meetings of the public body are regularly ~~held, and making held.~~

b. ~~a reasonable number of such notices~~ Making copies of the public notice available. ~~In addition, for all noneounty and nonmunicipal public bodies, public notice required by this subsection shall include, but not be limited to, electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public. In addition, all public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post said notice to the designated State of Delaware website approved by the Secretary of State.~~

c. Electronic posting that is accessible to the public as follows:

1. A public body in the executive branch of state government shall electronically post the notice to the designated State of Delaware website approved by the Secretary of State.

2. A public body that is not required to post the notice under paragraph (e)(5)c.1. of this section must post the notice on either of the following:

A. A designated State of Delaware website, approved by the Registrar of Regulations.

B. A website maintained or designated by the public body holding the meeting.

(6) ~~When~~ If the agenda is not available as of the time of the initial posting of the public ~~notice it shall~~ notice, the agenda must be added to the public notice ~~at least when available and at least 6 hours in advance of said meeting,~~ the meeting and the reasons for the delay in posting ~~shall~~ the agenda must be briefly set forth on the agenda.

(f) ~~Each~~ Except as provided under paragraph (f)(2) of this section, a public body shall maintain minutes of all
meetings, including executive sessions, conducted ~~pursuant to~~ under this section, and shall make ~~such~~ the minutes available
for public inspection and copying as a public record.

(1) ~~Such~~ The minutes shall ~~must~~ include a record of ~~these~~ all of the following:

a. The members of the public body present at the meeting.

b. Each vote taken and action agreed upon. The record of each vote must be ~~and a record~~, by individual
~~members (except~~ members, except ~~where~~ if the public body is a town assembly where all citizens are entitled to
vote), ~~of each vote taken and action agreed upon.~~ vote.

(2) ~~Such minutes or portions thereof,~~ A public body may withhold from public disclosure the portion of the
minutes regarding an executive session conducted under this section and any public records pertaining to executive
~~sessions conducted pursuant to this section, may be withheld from public disclosure so~~ an executive session conducted
under this section for as long as public disclosure would defeat the lawful purpose for the executive session, but no
longer.

(3) ~~All public bodies in the executive branch of state government that are subject to the provisions of this~~
~~chapter and meet~~ A public body that meets 4 or fewer times per year shall electronically post draft minutes of open
public meetings, identified as “draft minutes,” to the website ~~designated State website approved by the Secretary of~~
State under paragraph (c)(5)c. of this section within 20 ~~working~~ business days after the conclusion of the meeting.

a. ~~Prior to being posted,~~ Before posting under this paragraph (f)(3), draft minutes may be distributed to
members of the public body who were present at the open public meeting.

b. Draft minutes may continue to be revised and corrected up until final minutes are approved by the
public body at an open meeting.

(4) ~~All public bodies~~ A public body in the executive branch of state government that ~~are~~ is subject to the
~~provisions of this chapter shall electronically post final approved minutes of open public meetings to the website~~
~~designated State of Delaware website approved by the Secretary of State~~ under paragraph (c)(5)c. of this section within
5 ~~working~~ business days of final approval of ~~said~~ the minutes.

(5) If the public body is a public body that is directed or intended to dissolve after the completion of a set time
or task, the public body shall publish minutes of the public body’s final meeting in unapproved or draft format.

(g)(1) ~~Every~~ A public body shall hold a regularly scheduled meeting of a public body shall be held that public
body within the geographic jurisdiction of that public body. ~~All such other meetings shall be held as follows:~~

(1)(2)a. A public body serving ~~any political subdivision of the State, including, but not limited to, any city, town or school district,~~ a political subdivision of this State shall hold ~~all such other meetings~~ a meeting other than a regularly scheduled meeting within ~~its~~ that public body's jurisdiction or the county in which ~~its~~ that public body's principal office is ~~located,~~ located.

~~b. unless it~~ Paragraph (g)(2)a. of this section does not apply to meeting that is school board training that has been approved by the Secretary of the Department of Education as beneficial to school board development activities.

(2)(3) For the purposes of this subsection, a ~~“regularly~~ “regularly scheduled meeting” ~~shall mean~~ means any meeting of a public body held on a periodic basis.

(3)(4) ~~The provisions of this subsection, insofar as they are not practicable, shall~~ This subsection does not apply to any emergency meeting ~~which~~ that is necessary for the immediate preservation of the public peace, ~~health~~ health, or safety, or to a meeting held by a public body outside of ~~its~~ the public body's jurisdiction which is necessary for the immediate preservation of the public financial welfare.

(h) This section ~~shall not apply to the proceedings of:~~ does not apply to any of the following:

(1) ~~Grand juries;~~ A grand jury.

(2) ~~Petit juries;~~ A petit jury.

(3) ~~Special juries;~~ A special jury.

(4) ~~The deliberations of any court;~~ a court.

(5) ~~The Board of Pardons and Parole;~~ the Board of Parole.

(6) ~~Public bodies having only 1 member;~~ A public body that has only 1 member.

(7) ~~Public bodies within the legislative branch of the state government other than the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Legislative Oversight and Sunset Committee, Legislative Council, Legislative Hall Art and History Advisory Commission, committees, excluding ethics committees, specifically enumerated and created by Resolution of the House of Representatives or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives or Senate;~~ [Repealed.]

(8)a. The Victims' Compensation Assistance Program Appeals Board ~~may close any meeting to the public where:~~ Board, if the Board closes the meeting to the public for any of the following reasons:

1. The claim to be considered derives from any sexual offense ~~within the definitions of a crime in~~ included in the definition of “crime” under § 9002 of Title 11.

2. The claim to be considered derives from any offense by ~~or against~~ a child, as defined in ~~this section, § 9002 of Title 11,~~ unless ~~such~~ the child has been deemed amenable to the jurisdiction of a criminal court as to the matter before the Board.

3. The claim to be considered derives from any matter not yet adjudicated.

4. The claim to be considered involves a ~~“victim” who is a “child” as those terms are defined in Chapter 90 of Title 11.~~ victim who is a child, as victim and child are defined in § 9002 of Title 11.

b. The Board shall produce a complete record of any proceedings closed to the ~~public which record may be denied to anyone seeking access for good cause shown; and~~ public. The Board may deny access to the record on good cause shown.

(9) The deliberations of ~~the following agencies~~ any of the following public bodies for any case decision governed by the Administrative Procedures Act ~~in~~ under Chapter 101 of this title:

a. Delaware Human and Civil Rights ~~Commission;~~ Commission.

b. Industrial Accident ~~Board;~~ Board.

c. Tax Appeals ~~Board; and~~ Board.

d. Victims' Compensation Assistance Program Appeals Board.

(i) In an enforcement action ~~pursuant to~~ under § 10005 of this title, ~~a citizen~~ a person or the Attorney General, ~~as the case may be,~~ General may seek the forfeiture of all or part of the compensation of ~~members of a board, commission or other~~ the members of a public body for any closed meeting ~~which such board, commission or other~~ that the public body closed knowing that ~~such action~~ the closure violated this chapter.

(1) ~~Such forfeiture~~ Forfeiture under this subsection may only be ordered by the Superior Court if the Court makes a specific finding that the ~~board, commission or~~ public body ~~had no~~ did not have a good faith basis to believe that the meeting could be closed.

(2) ~~It shall be~~ is an absolute defense that ~~an individual never voted~~ a member of the public body did not vote in favor of the closed meeting.

(3) If the ~~board, commission or~~ public body also met ~~validity~~ validly for other purposes on the same day as the meeting which violated ~~the act, such~~ this chapter, the Superior Court shall consider ~~the valid action shall be considered~~ by the Court in determining the extent of any forfeiture award.

Section 6. Amend § 10005, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10005. ~~Enforcement.~~ Enforcement; Attorney General; judicial review.

907 (a) Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any
908 citizen may challenge the validity under this chapter of any action of a public body by filing suit within 60 days of the
909 citizen's learning of such action but in no event later than 6 months after the date of the action.

910 (b) Any citizen denied access to public records as provided in this chapter may bring suit within 60 days of such
911 denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for
912 the county or city in which the public body ordinarily meets or in which the plaintiff resides. Notwithstanding the
913 foregoing, a person denied access to public records by an administrative office or officer, a department head, commission,
914 or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title
915 must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in
916 subsection (c) of this section. Thereafter, the petitioner or public body the Attorney General is otherwise obligated to
917 represent may appeal an adverse decision on the record to the Superior Court within 60 days of the Attorney General's
918 decision.

919 (c) In any action brought under this section, the burden of proof shall be on the custodian of records to justify the
920 denial of access to records, and shall be on the public body to justify a decision to meet in executive session or any failure
921 to comply with this chapter.

922 (d) Remedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or
923 other appropriate relief. The court may award attorney fees and costs to a successful plaintiff of any action brought under
924 this section. The court may award attorney fees and costs to a successful defendant, but only if the court finds that the
925 action was frivolous or was brought solely for the purpose of harassment.

926 (e) Any citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or
927 is about to occur. The petition shall set forth briefly the nature of the alleged violation. Upon receiving a petition, the
928 Attorney General shall promptly determine whether the petition is against an administrative office or officer, agency,
929 department, board, commission or instrumentality of state government which the Attorney General is obliged to represent
930 pursuant to § 2504 of this title. Every petition against an administrative office or officer, agency, department, board,
931 commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504
932 of this title shall be referred to the Chief Deputy Attorney General who shall, within 20 days of receiving the petition,
933 render a written determination to the petitioner and the public body involved declaring whether a violation has occurred or
934 is about to occur. If the Chief Deputy finds that a violation of this chapter has occurred or is about to occur, the Attorney
935 General shall not represent the public body in any appeal filed pursuant to this chapter for such violation if the public body
936 the Attorney General is otherwise obligated to represent fails to comply with the Chief Deputy's determination. Regardless

of the finding of the Chief Deputy, the petitioner or the public body may appeal the matter on the record to Superior Court. In every other case, the Attorney General shall, within 10 days, notify in writing the custodian of records or public body involved. Within 20 days of receiving the petition, the Attorney General shall make a written determination of whether a violation has occurred or is about to occur, and shall provide the citizen and any custodian of records or public body involved with a copy of the determination. If the Attorney General finds that a violation of this chapter has occurred or is about occur, the citizen may: (1) File suit as set forth in this chapter; or (2) request in writing that the Attorney General file suit on the citizen's behalf. If such request is made, the Attorney General may file suit, and shall within 15 days notify the citizen of the decision to file suit, unless the custodian of records or public body has agreed to comply with this chapter. The citizen shall have the absolute right to file suit regardless of the determination of the Attorney General, and may move to intervene as a party in any suit filed by the Attorney General.

(f) An administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obligated to represent pursuant to § 2504 of this title shall not require the approval of the Attorney General pursuant to § 2507 of this title to address claims of violation under this chapter.

(a)(1) Petition to the Attorney General. A person may petition the Attorney General to determine whether a violation of this chapter has occurred. A petition must meet the requirements of subsection (b) of this section.

(2) Initial screening of Petition.

a. On receiving a petition, the Attorney General shall determine whether the petition includes allegations against an individual or entity that the Attorney General is obligated to represent under § 2504 of this title. The Chief Deputy shall process all petitions that include allegations against an individual or entity that the Attorney General is obligated to represent, and the Attorney General shall process all other petitions.

b. A petition that the Attorney General determines does not meet the requirements of subsection (b) of this section may be resubmitted on meeting the requirements of subsection (b) of this section.

c. The Attorney General and Chief Deputy may appoint designees as appropriate to exercise any duties under this section.

(3) Absent exceptional circumstances, the Attorney General, or Chief Deputy, shall issue a written determination no later than 30 business days after the date the petition meeting the requirements of subsection (b) of this section is received.

(4) A determination of the Attorney General or Chief Deputy is advisory only and may not be considered a case decision under subchapter III of Chapter 101 of Title 29.

(5) There is not a right of appeal from a determination of the Attorney General or the Chief Deputy regarding a violation of this chapter.

(6) A person may not seek a written determination with respect to any alleged violation of this chapter that is the subject of a pending lawsuit. If the person initiates a lawsuit during the pendency of a petition, the petition is deemed withdrawn to the extent it requests a written determination with respect to any alleged violation of this chapter that is the subject of the lawsuit.

(b) Petition Requirements and Procedures. The Attorney General shall establish the requirements and procedures under which a petition and a public body's response must be filed and reviewed, and a written determination issued.

(1) A petition must include all of the following:

a. Identification of the specific FOIA issues and a brief explanation of the nature of the alleged violation.

b. All supporting correspondence and documentation and any additional documentation or information requested by the Attorney General.

(2) A petition meeting the requirements of paragraph (b)(1) of this section must be received by the Attorney General within 120 calendar days after the date of the conduct alleged in the petition to violate this chapter.

(3) To meet the burden of proof under subsection (c) of this title, a public body's response to a petition must include a statement, under oath, of the efforts taken to determine whether responsive records exist and the results of those efforts or of any other fact necessary to meet the public body's burden.

(c) Burden of Proof. The burden of proof is on the public body to justify any of the following:

(1) The denial of access to records.

(2) A decision to meet in executive session.

(3) Any failure to comply with this chapter.

(d) Notice. The Attorney General or Chief Deputy, as appropriate, shall notify the public body identified in a petition within 10 calendar days of receiving the petition under paragraph (a)(2) of this section.

(e) Lawsuits.

(1) A person may file a lawsuit challenging the validity of any act, omission, or other conduct of a public body because of a failure to comply with this chapter, regardless of whether any of the following occurred:

a. The person has filed a petition under subsection (a) of this section.

b. A determination has been issued under subsection (a) of this section as to the validity of any act, omission, or other conduct of a public body.

995 (2)a. If the Attorney General or Chief Deputy, as appropriate, determines that a public body has committed a
996 violation of this chapter, the person may, instead of filing a lawsuit, request in writing that the Attorney General file a
997 lawsuit on the person's behalf and may also move to intervene as a party in any lawsuit filed by the Attorney General
998 on the person's behalf.

999 b. If the person requests that the Attorney General file a lawsuit on the person's behalf, the Attorney
1000 General shall notify the person of the Attorney General's decision within 10 business days after the Attorney
1001 General receives the request. There is not a right of appeal from the denial of a request to file a lawsuit on the
1002 person's behalf.

1003 c. If the Chief Deputy finds that a violation of this chapter has occurred, the Attorney General may not
1004 represent the public body in a lawsuit filed under this chapter for that violation if the public body fails to comply
1005 with any recommendation in the Chief Deputy's determination. If the Attorney General does not represent the
1006 public body under this paragraph (c)(2)c., the public body is not required to obtain the approval of the Attorney
1007 General to retain outside counsel under § 2507 of this title.

1008 (3) *Deadline to file lawsuit.*

1009 a. Regardless of when a person learns of conduct that violates this chapter, a lawsuit may not be brought
1010 more than 120 calendar days after the date of conduct that is alleged to have violated this chapter. If a person has
1011 filed a petition with the Attorney General under this section, this 120-day period does not expire until the later of
1012 the following:

1013 1. Thirty calendar days after the written determination is issued under paragraph (a)(3) of this
1014 section.

1015 2. The end of the 120-day period.

1016 b. Except as allowed under paragraph (c)(3)a.1. of this section, the deadline to file a lawsuit under
1017 paragraph (c)(3)a. of this section may not be tolled or extended.

1018 (4) *Jurisdiction and venue.*

1019 a. Except as provided under paragraph (c)(4)b. of this section, the Superior Court has exclusive
1020 jurisdiction over all lawsuits alleging a violation of this chapter.

1021 b. The Court of Chancery has exclusive jurisdiction over any lawsuit to the extent the lawsuit includes a
1022 claim for injunctive relief.

1023 c. The venue for a lawsuit under this section is in the county in which the public body ordinarily meets or
1024 in which the plaintiff resides.

1025 (5) Burden of proof. The burden of proof is on the public body for any lawsuit brought under this section.

1026 (6) Judicial remedies.

1027 a. Remedies for violations of this chapter in a lawsuit brought under this section include all of the
1028 following:

1029 1. Injunctive relief.

1030 2. Declaratory judgment.

1031 3. Writ of mandamus.

1032 4. Forfeiture of all or part of the compensation of members of the public body.

1033 5. Other appropriate relief.

1034 b. Monetary damages are not recoverable under this section.

1035 c. The court may award reasonable attorney fees and costs to a successful plaintiff of any action brought
1036 under this section. The court may award reasonable attorney fees and costs to a successful defendant, but only if
1037 the court finds that the action was frivolous or was brought solely for the purpose of harassment.

1038 Section 7. Amend § 10006A, Title 29 of the Delaware Code by making deletions as shown by strike through and
1039 insertions as shown by underline as follows:

1040 § 10006A. ~~Open meetings; virtual meetings; reasonable accommodations for members with a disability.~~
1041 Reasonable accommodations for members with a disability; public monitoring; virtual meetings.

1042 (a)(1) A public body shall allow a member of the public body ~~with~~ who has a disability to attend a meeting of the
1043 public body through the use of an electronic means of communication, instead of being required to attend in-person at a
1044 physical location, as a reasonable modification under § 4504 of Title 6 or a reasonable accommodation under § 723 of Title
1045 19, unless it imposes an undue burden.

1046 (2) ~~A member When a member is attending a meeting through the use of an electronic means of~~
1047 ~~communication as a reasonable modification or reasonable accommodation is considered present for all purposes as if~~
1048 ~~the member is physically attending, including for quorum and voting; under paragraph (a)(1) of this section, all of the~~
1049 following provisions of this section apply to that member:

1050 a. Paragraphs (c)(3) and (c)(4) of this section.

1051 b. Subsection (d) of this section.

1052 (3) Allowing a member of the public body who has a disability to attend a meeting of the public body under
1053 this subsection does not require compliance with the provisions of subsection (c) of this section that do not apply to a
1054 member.

(b) At the discretion of the ~~chair~~ Chair or presiding officer, a public body may allow the public to monitor or provide public comment through the use of an electronic means of communication at any meeting.

(c) A public body may hold a virtual meeting if all of the following occur:

(1) The meeting notice under § 10004 of this title includes information regarding how the public can monitor or participate in the meeting under paragraph (c)(6) of this section.

(2) The meeting has an anchor location.

(3) The identity of a member or witness is verified, and the actions of a member are authenticated, in a manner satisfactory to the presiding officer or ~~chair~~ Chair.

(4) All participating members and witnesses can simultaneously do 1 of the following regarding each member or witness who is recognized by the presiding officer or ~~chair~~ Chair:

a. Hear the comments of each member or witness.

b. Hear the comments of and view each member or witness.

(5) A document used during the meeting by a member or witness, and that is accepted by the presiding officer or ~~chair~~ Chair, is immediately provided to each member or witness participating in the meeting and made available to the public under § 10003 of this title.

(6) Except during an executive session under § 10004 of this title, the public is able to do all of the following through an electronic means of communication:

a. Monitor the meeting.

b. Provide public comment, if the public body is required to accept, or provides an opportunity for, public comment.

(7) Minutes of the virtual meeting are maintained under § 10004 of this title.

(d)(1) All actions taken during a virtual meeting conducted under this section have the same legal effect as if all of the members were physically present at the same location.

(2) For the purposes of determining quorum for a virtual meeting, a member participating in a virtual meeting is considered present as if the member were physically present at the meeting.

(3) For the purposes of voting during a virtual meeting, a member participating in a virtual meeting is able to vote as if the member were physically present at the meeting.

(4) A technological problem that prevents or limits public access otherwise required under this ~~chapter~~ section does not invalidate a virtual meeting or an action taken at a virtual meeting.

(e) During a state of emergency, a public body may hold a virtual meeting at which all members participate through the use of an electronic means of communication without an anchor location if, in addition to the requirements under subsection (c) of this section, all of the following occur:

(1) The virtual meeting is preceded by the same public notice as required under § 10004 of this title, except that notice of the public meeting does not need to be conspicuously posted at the principal office of the public body holding the meeting or where meetings of the public body are regularly held.

(2) If all of the members of the public body are elected by the ~~public to serve on the public body~~, public or appointed to fill a vacant elected position all of the following must occur:

a. A document that is used during the meeting by a member or witness, and that is accepted by the presiding officer or ~~chair~~, Chair, is immediately transmitted to each member or witness participating in the meeting.

b. The public is able to review a recording of the meeting within a reasonable time after the meeting concludes.

(f) If necessary to prevent a public health emergency, as defined in § 3132 of Title 20, the Governor may issue an executive order allowing public bodies to hold virtual meetings at which all members may participate through the use of an electronic means of communication without an anchor location. A virtual meeting held under this subsection must comply with the requirements under subsection (e) of this section.

(g) Under § 9 of Article II of the Delaware Constitution, this section does not apply to the General Assembly or a public body within the General Assembly governed by the rules of proceedings adopted under § 9 of Article II of the Delaware Constitution.

Section 8. Amend § 10007, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10007. ~~Education~~. FOIA education and training; Attorney General opinions related to this chapter.

(a) The Attorney General shall publish biennially a manual for FOIA coordinators. The Attorney General shall send the manual to each FOIA coordinator electronically and shall make the manual available on the Attorney General's website. The Attorney General shall, at a minimum, include all of the following in the manual:

(1) An explanation of the duties and responsibilities of the FOIA ~~coordinator~~; coordinator.

(2) An explanation of the time frames included within this chapter, how to calculate these time frames, and the circumstances in which any of these time frames are ~~tolled~~; tolled.

(3) An explanation of the power of the public body to charge fees for requests for public ~~records~~; records.

(4) An explanation of the reasons for calling an executive session closed to the public ~~pursuant to~~ under the purposes listed in § 10004(b) of this title, including an explanation of the strategy session ~~exception; and~~ exception.

(5) A summary of Delaware judicial opinions, Attorney General opinions, and other legal opinions issued in the preceding 2 years related to this chapter.

(b) The Attorney General shall ~~hold~~ annually hold a training seminar for FOIA coordinators that ~~shall~~ must be open to the public and noticed ~~in accordance with~~ under this chapter. The Attorney General shall send notice of the training to each FOIA coordinator and shall post notice of the training on the Attorney General's website. The Attorney General shall, at a minimum, include all of the following in the training:

(1) The topics included in the manual ~~pursuant to~~ under subsection (a) of this ~~section; section.~~

(2) A discussion of best practices for responding to requests for public ~~records; and~~ records.

(3) A question and answer session.

(c) The Attorney General shall, in addition to any other publication method deemed appropriate by the Attorney General, maintain a website containing Attorney General opinions related to this chapter. The Attorney General shall include on the website a summary of the holding of each Attorney General opinion.

(d) Nothing in this section ~~shall~~ may be construed as legal advice in contravention of § 2504(2) or § 2515 of this title.

SYNOPSIS

With a commitment to transparency and engagement with interested Delawareans, including journalists whose work is essential to the realization of America's promise, the sponsors file this Act at the end of the 153rd General Assembly for purposes of soliciting feedback and estimating the potential impact on the State budget. On receipt of that feedback and estimations, the sponsors intend to consider changes to this Act's language and file a similar or modified version of this Act in the 154th General Assembly.

Delaware's Freedom of Information Act ("FOIA") was enacted in 1976 because "[i]t is vital in a democratic society that public business be performed in an open and public manner so that the citizens [are] advised of the performance of public officials and of the decisions that are made by such officials in formulating and executing public policy." § 10001 of Title 29 of the Delaware Code (1976). FOIA has been amended numerous times since then to continue to meet its original purpose of furthering government accountability. This Act continues those efforts by making the following substantive changes to FOIA:

(1) Applying FOIA to "the public" generally, rather than just to citizens of this State. Delaware is 1 of 8 states that currently limits the application of their FOIA law to those who are citizens of their state. This change requires that all public bodies that are subject to the requirements of FOIA respond to requests for information from persons whether or not they are residents of Delaware.

(2) Removes the broad exemption in FOIA for records of the University of Delaware and Delaware State University and creates the following specific exemptions for some records of public educational institutions:

- Confidential letters or statements related to admission, employment, or honors.
- Proprietary information related to study or research.
- Personal fundraising strategies relating to and confidential financial and personal information about identifiable donors or prospective donors.
- Allowing anonymity for donors and prospective donors.

(3) Removes the blanket exemption for investigatory files compiled for civil or law-enforcement purposes and instead requires the public body to make a finding that one of the enumerated harms would result if the record was disclosed.

(4) Removes the provision that permits a public body to withhold the identity of a contributor of a charitable contribution to the public body. However, this exemption is maintained for public institutions of higher education.

(5) Allows periodic reports to be posted on a general website in lieu of sending directly to individuals and entities except for reports to the General Assembly.

(6) Requires a public body to respond to a FOIA request within 10 business days instead of the current 15 business days.

(7) Permits a public body to deny a FOIA request if the public body finds the request to be unreasonably broad, unduly burdensome, intended to disrupt the essential functions of the public body, or is abusive. If the public body makes such a finding, the public body must provide the requestor with a summary of the facts that are the basis for the denial. The public body's denial is subject to review under § 10005 by the Attorney General through a petition or by a lawsuit in the Superior Court or Court of Chancery, as applicable.

(8) Allows a public body to charge fees for scanning hard copy records to fulfill a FOIA request.

(9) Allows a public body to charge administrative fees for all reviews, including the review and redaction of information exempt from FOIA. The review and redaction of information is often performed by non-attorney staff in conjunction with necessary review for exceptions and exclusions. Exceptions are made for resolving issues of law and requests made by news media and for scholarship and scientific research.

(10) Allows non-residents of this State to make a FOIA request, but allows public bodies to charge higher fees for responses to non-residents.

(11) Clarifies that a public body can go into executive session to discuss any individual's qualifications to hold a job or pursue training, not just to discuss the qualifications of a citizen of this State.

(12) Removes a provision exempting certain public bodies within the General Assembly from FOIA's open meeting requirements and requiring certain public bodies within the General Assembly to abide by FOIA's open meeting requirements. Under the Court of Chancery's ruling in *News-Journal Co. v. Boulden*, 1978 Del. Ch. LEXIS 536 (Del. Ch. 1978), a FOIA requirement to hold open meetings was held to not apply to the General Assembly because the requirement was adopted by a previous General Assembly and a previous General Assembly is constitutionally prohibited from controlling the manner in which a subsequent General Assembly exercises its lawmaking powers. While these requirements are not binding on the General Assembly, the House and Senate have, for the last 17 years, including the current General Assembly, adopted rules requiring the committee process to be open to the public.

(13) Clarifies, simplifies, and makes uniform the remedies available to the public when a public body fails to comply with FOIA obligations, as follows:

- Provides that Attorney General or Chief Deputy determinations are advisory and not appealable.
- Modifies the timeframes in which the public may file a FOIA petition with the Attorney General.
- Eliminates the need for the public to petition the Attorney General before initiating a lawsuit against an individual or entity that the Attorney General is obligated to represent.
- Gives the public 120 days to bring suit after a FOIA violation, except that when a petition is filed with the Attorney General, a petitioner may file a lawsuit the later of 120 days after the violation occurred or 30 days after issuance of the determination on the petition by the Attorney General.
- Provides the Superior Court with exclusive jurisdiction over all FOIA disputes, except that lawsuits involving claims for temporary, preliminary, or permanent injunctive relief when there is no adequate remedy at law must be brought in the Court of Chancery.
- Clarifies that monetary damages may not be awarded for FOIA violations and that an award of attorney fees be reasonable.
- Clarifies that the public may not file a petition with the Attorney General regarding a FOIA violation that is the subject of a pending lawsuit and that a pending petition is deemed withdrawn if the FOIA violation becomes the subject of a lawsuit.
- Ensures that the public has sufficient time to pursue judicial remedies after the issuance of a written determination by the Attorney General.

- Extends the standard time for the Attorney General or Chief Deputy to issue a written determination to 30 business days of receipt of a petition, instead of the current 20 calendar days.

This Act also makes technical corrections to conform FOIA to the standards of the Delaware Legislative Drafting Manual, including:

(1) Clarifying FOIA by adding definitions for terms that are currently undefined, including “executive session” and “political subdivision of this State”.

(2) Moving definitions and exemptions specific to the University of Delaware and Delaware State University that are under § 10002(1) of Title 29 to be within the general definitions and exemptions.

(3) Moving the list of records excluded from the definition of “public record” to its own Code section (§ 10002A of Title 29).

(4) Clarifying the executive session exemption for matters in which the name, competency, and abilities of an individual student is discussed by separating it from the exemption for personnel matters.

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a charter, either directly or indirectly, issued to a municipality or to a corporation for educational purposes sustained in whole or part by the State, including the University of Delaware and Delaware State University.

Author: Senator Townsend