



Lewes Board of Public Works Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the Delaware Code, the Freedom of Information Act.

BPW employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the BPW and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"BPW" means the Lewes Board of Public Works or "BPW"

"FOIA" means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the Delaware Code.

"FOIA Coordinator" shall mean the person designated by the BPW General Manager to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in Section 3.6.

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

"Requesting Party" shall mean the party filing a FOIA Request.

"General Manager" means the General Manager of the Lewes Board of Public Works.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the BPW in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the proper form. Copies of the FOIA Request Form may be obtained from the BPW's website, or from the BPW office.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the BPW to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the BPW in locating the requested records, the BPW 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.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at: BPW FOIA Coordinator, 107 Franklin Ave, Lewes, DE 19958, by email to: generalmanager@lewesbpw.com, by fax at: (302) 645-6348; or via online request form, which may be found on the BPW's home page at www.LewesBPW.delaware.com.

3.3 FOIA Coordinator

3.3.1 The BPW General Manager shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the BPW's responses thereto. The FOIA Coordinator shall be identified on the BPW's website. The FOIA Coordinator may designate other BPW employees to perform specific duties and functions hereunder.

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

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the BPW received the Request; the BPW's response deadline pursuant to §3.4; the date of the BPW's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §3.3.2, 3.5 and 3.6; the dates of review by the BPW pursuant to §3.7 and the names of individuals who conducted such reviews; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 BPW Response to Requests

3.4.1 The BPW shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the BPW shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

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

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the BPW from its own records, if doing so can be accomplished by the BPW with reasonable effort. If the BPW determines that it cannot fulfill all or any portion of such request, the BPW coordinator shall promptly request that the BPW staff provide the email records to the General Manager of the BPW. Upon receipt from staff, the BPW General Manager may review the email records in accordance with § 3.7 hereunder.

3.5.2 Before requesting outside vendors to provide email records, the BPW shall provide a written cost estimate from outside vendors to the Requesting Party, listing all charges expected to be incurred by outside vendors in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the BPW but that are either not within its possession or cannot otherwise be fulfilled by the BPW with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the BPW shall promptly request that the relevant public body provide the Non-Custodial Records to the BPW. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the BPW, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the BPW.

3.6.2 . Before requesting any Non-Custodial Records, the BPW shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by BPW

3.7.1 Prior to disclosure, records may be reviewed by the BPW to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del. C. §10002(l) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del. C. §10002(l) or any other applicable provision of law. Nothing herein shall prohibit the BPW from disclosing or permitting access to Public Records if the BPW determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The BPW shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11" and 8.5" x 14".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows: Actual costs incurred, including time to arrange printing, by the BPW for the use of commercial printing vendors will be charged to the Requesting Party.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the BPW's legal review of whether any portion of the requested records is exempt from FOIA. The BPW shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the BPW shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the BPW shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the BPW may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.4 Payment

4.4.1 Payment of all fees shall be due no later than the time the records are released to the Requesting Party.

4.4.2 The BPW may require pre-payment of all fees prior to performing any services hereunder.

4.4.3 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the BPW in preparing the requested records. The BPW shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

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

6.0 Requests for Confidentiality

6.1 A person may request that certain records or portions of records submitted to BPW be held confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained. The following section sets forth procedures and criteria by which BPW will determine confidentiality of records or portions of records.

6.2 Procedure - In order for BPW to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the BPW General Manager at the time the record is submitted. The request shall provide substantiation for the allegation that the information should be treated as confidential. The request shall contain the following information:

6.2.1 The measures taken to guard against undesired disclosure of the information to others;

6.2.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

6.2.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

6.2.4 Verification that effort or money has been expended in developing the information.

6.3 The following information shall be submitted:

6.3.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review). The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;

6.3.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and

6.3.3 Certification through a separate, notarized affidavit that the information is either trade secret or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.

6.4 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the BPW General Manager in making a determination of confidentiality pursuant to this privilege.

6.5 After a final determination of confidentiality has been issued by the BPW General Manager, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if BPW determines that:

6.5.1 The Responsible Official notified BPW in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

6.5.2 The later submission identifies with particularity the prior confidentiality determination; and

6.5.3 The notice to BPW met the requirements of Section 6.3 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

6.5.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.6 Criteria

6.6.1 The BPW General Manager may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

6.6.2 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;

6.6.3 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;

6.6.4 No statute specifically requires disclosure of the information;

6.6.5 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and

6.6.6 Verification that significant effort or money has been expended in developing the information.

6.7 Final Determination - The BPW General Manager will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the BPW General Manager's determination.

6.7.1 If the BPW General Manager determines that disclosure of the information would violate 29 Del.C. §10002(1)(2), the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify BPW in writing of such changes.

6.7.2 If the BPW General Manager finds that the information is not entitled to confidential treatment, the information will be considered public. Upon such finding by the General Manager of non-confidentiality, the BPW shall return the information upon request by the person who submitted the information.

6.8 Defense of BPW General Manager's Determination

6.8.1 Verification of Information - There will be instances in which the BPW General Manager may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The BPW General Manager relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

6.8.2 Information Determined Confidential - If the BPW General Manager makes a confidentiality determination that certain information is entitled to confidential treatment, and BPW is sued by a requestor for disclosure of that information, BPW will:

6.8.2.1 Notify each affected party of the suit;

6.8.2.2 Call upon each affected party to furnish assistance where necessary in preparation of BPW's defense; and

6.8.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

7 DE Reg. 1560 (5/1/04)

15 DE Reg. 864 (12/01/11)