Part X
General Regulations for State Agencies
Chapter 100
FREEDOM OF INFORMATION ACT

§ 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 have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens 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, this chapter is adopted, and shall be construed.

(60 Del. Laws, c. 641, § 1; 65 Del. Laws, c. 191, § 1.)

§ 10002 Definitions.

(a) "Agenda" shall include but is not limited to 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.

(b) "Caucus" means members of the House of Representatives or Senate, of the same political party, who assemble to discuss matters of public business.

(c) "FOIA" means the Freedom of Information Act [this chapter].

(d) "FOIA coordinator" shall mean the person designated by the Cabinet Secretary, school district superintendent, local government head, Chair, or equivalent executive officer of the public body to receive and process FOIA requests.

(e) "FOIA request" or "request" means a request to inspect or copy public records pursuant to § 10003 of this title.

(f) "FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for public records may be made.

(g) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by video-conferencing.

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

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

(2) Expends or disburses any public funds, including grants, gifts or other similar disbursals and distributions; or

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

"Public body" shall not include any caucus of the House of Representatives or Senate of the State. "Public body" shall include any authority created under Chapter 14 of Title 16.

(i) "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.

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

(k) "Public funds" are those funds derived from the State or any political subdivision of the State.

(*l*) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

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

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

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

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

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

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

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

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

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

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

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

1. The veteran subject of the discharge;

2. The spouse or child of a veteran, with consent of the veteran;

3. If the veteran is deceased, a survivor or heir of the veteran who 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;

5. A county, state or federal officer assisting the veteran or veteran's family with a veteran's benefit application;

6. Anyone authorized by an order from a Delaware court, to view or copy the document; or

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

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

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

(m) "Requesting party" shall mean the person filing the FOIA request.

(n) "Video-conferencing" means any system permitting interaction among all participants in 2 or more noticed public locations in compliance with § 10006 of this title.

(60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1; 63 Del. Laws, c. 424, § 1; 64 Del. Laws, c. 113, § 1; 65 Del. Laws, c. 191, §§ 2-6; 66 Del. Laws, c. 143, § 1; 67 Del. Laws, c. 281, § 194; 69 Del. Laws, c. 67, § 2; 69 Del. Laws, c. 250, § 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 260, §§ 1, 2, 3; 73 Del. Laws, c. 354, § 1; 75 Del. Laws, c. 235, §§ 3-5; 77 Del. Laws, c. 38, §§ 1-5, 8; 77 Del. Laws, c. 211, §§ 1, 2; 78 Del. Laws, c. 12, § 1; 78 Del. Laws, c. 382, § 1; 79 Del. Laws, c. 265, § 19; 79 Del. Laws, c. 272, § 1; 79 Del. Laws, c. 307, § 1; 79 Del. Laws, c. 334, § 1; 80 Del. Laws, c. 296, § 1.)

§ 10003 Examination and copying of public records.

(a) All public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.

(b) All state agencies and public bodies shall implement and promulgate a policy for addressing requests made under the Freedom of Information Act.

(c) All state agencies and public bodies shall develop a web portal for receiving FOIA requests through the internet. Such portals shall utilize the standard request form promulgated by the Attorney General.

(d)(1) All state agencies and public bodies are to provide reasonable assistance to the public in identifying and locating public records to which they are entitled access, and all records held by the agency are "public records" to which the public should have access unless they fall within the scope of enumerated exceptions in § 10002 of this title.

(2) All public bodies in the executive branch of state government that are subject to the provisions of this chapter and are required by statute, regulation, or other established policy to publish an annual or biennial report, shall electronically post copies of these reports to a single designated State website approved by the Secretary of State. Electronic notification of the availability of these reports on the designated State website shall fulfill a public body's duty to publish and provide these reports to the Governor, General Assembly, or other state agencies or state officials.

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

(f) *Form of request.* —

(1) All FOIA requests shall be made in writing to the public body in person, by U.S. mail, by e-mail, 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 promulgated form. Copies of the FOIA request form may be obtained from the website of any state agency, school district, or other public body.

(2) All requests shall adequately describe the records sought in sufficient detail to enable the public body to locate such records with reasonable effort. The requesting party shall be as specific as possible when requesting records. To assist the public body in locating the requested records, 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 who shall serve as the point of contact for FOIA requests and coordinate the public body's responses thereto. The FOIA coordinator shall be identified on the public body's website and each public body shall provide the name and contact information for its FOIA coordinator to the Attorney General. The public body shall update this information on its website and with the Attorney General within 20 working days of any change in its FOIA coordinator or the FOIA coordinator's contact information. The FOIA coordinator may designate other employees to perform specific duties and functions hereunder.

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

(3) In addition to the foregoing responsibilities, the FOIA coordinator shall maintain a document tracking all FOIA requests. For each FOIA request, the document shall include, at a minimum, the requesting party's contact information, the date the public body received the request, the public body's response deadline, the date of the public body's response (including the reasons for any extension), the names, contact information and dates of correspondence with individuals contacted in connection with requests, the dates of review by the public body, the names of individuals who conducted such reviews, whether documents were made available, the amount of copying and/or administrative fees assessed, and the date of final disposition.

(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 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 15 business days, the public body shall cite 1 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.

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

(i) *Requests for e-mail.* —

(1) Requests for e-mail records shall be fulfilled by the public body from its 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 request, the public body shall promptly request that its information and technology personnel or custodians provide the e-mail records to the public body.

(2) Before requesting the information and technology personnel or custodians to provide e-mail records, 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 receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.

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

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

(2) Before requesting any noncustodial records, 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 receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.

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

(*l*) *Hours of review.* — The public body shall provide reasonable access for reviewing public records 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:

(1) *Photocopying fees.* — In instances in which paper records are provided to the requesting party, photocopying fees shall be as follows:

Standard-sized, black and white copies: The first 20 pages of standard-sized, black and white copies 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 ($0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11", 8.5" x 14", and 11" x 17".

Oversized copies/printouts: The charge for copying oversized public records shall be as follows: 18" x 22", $2.00 per sheet; 24" x 36", $3.00 per sheet; documents larger than 24" x 36", $1.00 per square foot.

Color copies/printouts: An additional charge of $1.00 per sheet will 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.

(2) *Administrative fees.* — Administrative fees shall be levied for requests requiring more than 1 hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the public body's legal review of whether any portion of the requested records is exempt from FOIA. The public body shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonable required to process FOIA requests. In connection therewith, the public body shall minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.

Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized 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.

Administrative fees will be billed to the requesting party per quarter hour. These charges will be billed at the current hourly pay grade (prorated 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 for copying fees.

When 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 requests when computing fees hereunder. Notwithstanding the foregoing, any Freedom of Information Act policy adopted by a public body pursuant to subsection (b) of this section hereunder may include provisions for the waiver of some or all of the above administrative fees; provided that such waiver shall apply equally to a particular class of persons (i.e., nonprofit organizations).

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

(4) *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.

(5) *Payment.* — The public body may require all or any portion of the fees due hereunder to be paid prior to any service being performed pursuant to this section.

(60 Del. Laws, c. 641, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 10, § 1; 78 Del. Laws, c. 202, § 1; 78 Del. Laws, c. 382, § 1; 79 Del. Laws, c. 272, § 1; 79 Del. Laws, c. 273, § 1; 79 Del. Laws, c. 274, § 1.)

§ 10004 Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (h) of this section.

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

(1) Discussion of an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open. This provision shall not apply to the discussion by a licensing board or commission which is subject to the provisions of § 8735 of this title, of an individual citizen's qualifications to pursue any profession or occupation for which a license must be issued by the public body in accordance with Delaware law;

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

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

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

(5) Discussions which would 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;

(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;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

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

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The vote on the question of holding an executive session shall take place at a meeting of the public body which shall be open to the public, and the results of the vote shall be made public and shall be recorded in the minutes. The purpose of such executive sessions shall be set forth in the agenda and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must take place at a public meeting and the results of the vote made public.

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

(e)(1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings, including whether such meeting will be conducted by video-conferencing; however, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

(3) All public bodies shall give public notice of the type set forth in paragraph (e)(2) of this section of any special or rescheduled meeting as soon as reasonably possible, but in any event no later than 24 hours before such meeting. A special or rescheduled meeting shall be defined as one to be held less than 7 days after the scheduling decision is made. The public notice of a special or rescheduled meeting shall include an explanation as to why the notice required by paragraph (e)(2) of this section could not be given.

(4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available. In addition, for all noncounty 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.

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

(f) Each public body shall maintain minutes of all meetings, including executive sessions, conducted pursuant to this section, and shall make such minutes available for public inspection and copying as a public record. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer. All public bodies in the executive branch of state government that are subject to the provisions of this chapter and meet 4 or fewer times per year shall electronically post draft minutes of open public meetings, identified as "draft minutes," to the designated State website approved by the Secretary of State within 20 working days after the conclusion of the meeting. Prior to being posted, draft minutes may be distributed to members of the public body who were present at the open public meeting. Draft minutes may continue to be revised and corrected up until final minutes are approved by the public body at an open meeting. All public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post final approved minutes of open public meetings to the designated State of Delaware website approved by the Secretary of State within 5 working days of final approval of said minutes.

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

(1) A public body serving any political subdivision of the State, including, but not limited to, any city, town or school district, shall hold all such other meetings within its jurisdiction or the county in which its principal office is located, unless it is school board training that has been approved by the Secretary of Education as beneficial to school board development activities.

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

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

(h) This section shall not apply to the proceedings of:

(1) Grand juries;

(2) Petit juries;

(3) Special juries;

(4) The deliberations of any court;

(5) The Board of Pardons and Parole;

(6) Public bodies having 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, 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;

(8)a. The Victims' Compensation Assistance Program Appeals Board may close any meeting to the public where:

1. The claim to be considered derives from any sexual offense within the definitions of a crime in § 9002 of Title 11.

2. The claim to be considered derives from any offense by or against a child, as defined in this section, unless such 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.

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

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

a. State Human Relations Commission;

b. Industrial Accident Board;

c. Tax Appeals Board; and

d. Victims' Compensation Assistance Program Appeals Board.

(i) In an enforcement action pursuant to § 10005 of this title, a citizen or the Attorney General, as the case may be, may seek the forfeiture of all or part of the compensation of members of a board, commission or other public body for any closed meeting which such board, commission or other public body closed knowing that such action violated this chapter. Such forfeiture may only be ordered by the Court if the Court makes a specific finding that the board, commission or public body had no good faith basis to believe that the meeting could be closed. It shall be an absolute defense that an individual never voted in favor of the closed meeting. If the board, commission or public body also met validity for other purposes on the same day as the meeting which violated the act, such valid action shall be considered by the Court in determining the extent of any forfeiture award.

(60 Del. Laws, c. 641, § 1; 63 Del. Laws, c. 269, § 1; 65 Del. Laws, c. 191, §§ 7-12; 66 Del. Laws, c. 419, § 1; 67 Del. Laws, c. 367, §§ 1, 2; 71 Del. Laws, c. 38, § 1; 71 Del. Laws, c. 117, § 1; 71 Del. Laws, c. 191, § 1; 71 Del. Laws, c. 193, § 1; 72 Del. Laws, c. 459, § 1; 72 Del. Laws, c. 460, § 18; 75 Del. Laws, c. 178, §§ 1, 2; 77 Del. Laws, c. 38, §§ 6, 7; 77 Del. Laws, c. 211, § 3; 78 Del. Laws, c. 288, § 5; 79 Del. Laws, c. 125, § 4; 79 Del. Laws, c. 271, § 1; 79 Del. Laws, c. 393, § 1; 80 Del. Laws, c. 260, § 5.)

§ 10005 Enforcement.

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

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

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

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

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

(60 Del. Laws, c. 641, § 1; 65 Del. Laws, c. 191, § 13; 66 Del. Laws, c. 354, §§ 1, 2; 77 Del. Laws, c. 400, §§ 1-3.)

§ 10006 Video-conferencing participation in open meetings.

Unless otherwise prohibited by law, any public body subject to the provisions of this chapter, except for any public body in which members are elected by the public to serve on the public body, may conduct a meeting by means of video-conferencing, provided each attending member's participation occurs at a noticed public location where members of the public may also attend the meeting. The participation of a member of such public body by video-conferencing in compliance with this section shall be deemed attendance for all purposes, including purposes of establishing a quorum. When video conferencing is used, at least 1 of the noticed public locations shall be within the geographic jurisdiction of that public body. Meetings may otherwise be noticed for multiple public locations within the state where video-conferencing is available. During meetings where video-conferencing is used, each member must be identified, all participants shall be able to communicate with each other at the same time, and members of the public attending at the noticed public location or locations of the meeting must be able to hear and view the communication among all members of the public body participating by video-conference. Video-conferencing participation is not permitted when a verbatim transcript of the meeting may be required by law, except for public hearings on proposed rules and regulations, or where the chair or presiding officer determines that physical attendance is required at a single location.

(77 Del. Laws, c. 211, § 4.)

§ 10007 Education.

(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 the following in the manual:

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

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

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

(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 a training seminar for FOIA coordinators that shall be open to the public and noticed in accordance with 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 the following in the training:

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

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

(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 be construed as legal advice in contravention of § 2504(2) or § 2515 of this title.

(79 Del. Laws, c. 272, § 1.)