

**CITY OF NEWARK
DELAWARE**

RESOLUTION NO. 14-C

**ADOPTION OF THE FREEDOM OF INFORMATION ACT (FOIA) POLICY IN REGARDS TO
OPEN RECORDS REQUIREMENTS FOR THE CITY OF NEWARK, DELAWARE**

WHEREAS, in 2012, the Delaware State Legislature adopted and the Governor signed into law amendments to the State of Delaware's Freedom of Information Act (FOIA); and

WHEREAS, since the passage of said amendments, the City of Newark has been abiding by the open records policies as laid out in 29 *Del. C.* §10003 Examination and copying of public records; and

WHEREAS, in the interest of clarifying the FOIA policy of the City of Newark, Delaware for its citizens, the Council wishes to incorporate said policies into this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newark that the following FOIA policy is hereby approved and adopted for the City of Newark.

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 City of Newark ("City"). Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.

(b) The City shall maintain a web portal for receiving FOIA requests through the internet that shall utilize the format of the standard request form promulgated by the Attorney General.

(c) The City is 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.

(d) Form of request.

(1) All FOIA requests shall be made in writing to the City to the City Secretary's office in person, by e-mail, by fax, or online in accordance with the provisions hereunder. FOIA requests may be submitted using the FOIA Request Form of the City of Newark, 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 the City.

(2) All requests shall adequately describe the records sought in sufficient detail to enable the City to locate such records with reasonable effort. The requesting party shall be as specific as possible when requesting records. To assist the City in locating the requested records, the City 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.

(e) FOIA coordinator.

(1) The City Secretary shall be designated as FOIA coordinator to serve as the point of contact for FOIA requests and coordinate the City's responses thereto. The FOIA coordinator shall be identified on the City's website. 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 City in locating and providing the requested records. The FOIA coordinator and/or his or her designee will also work to foster cooperation between the City 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 City received the request, the City's response deadline, the date of the City'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 City, 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.

(f) Response to requests.

(1) The City 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 City 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.

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

(g) Requests for e-mail.

(1) Requests for e-mail records shall be fulfilled by the City from its own records, if doing so can be accomplished by the City with reasonable effort. If the City determines that it cannot fulfill all or any portion of such request, the City shall promptly request that its information and technology personnel provide the e-mail records to the City.

(2) Before requesting the information and technology personnel to provide e-mail records, the City 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.

(h) Requests for other noncustodial records.

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

(2) Before requesting any noncustodial records, the City 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.

(i) Review by the City. -- Prior to disclosure, records may be reviewed by the City to ensure that those records or portions of records deemed nonpublic may be removed pursuant to 29 *Del. C.* §10002 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 or any other applicable provision of law.

(j) Hours of review. -- The City shall provide reasonable access for reviewing public records during regular business hours.

(k) Fees. -- In accordance with the fees set forth in the Delaware Code, the following 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. The first hour of staff time per request shall be at no charge to the requestor. 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 City's legal review of whether any portion of the requested records is exempt from FOIA. The City 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 City 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 City 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 City may in its discretion aggregate staff time for all such requests when computing fees hereunder.

(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 City may require all or any portion of the fees due hereunder to be paid prior to any service being performed pursuant to this section.

RESOLVED at a Regularly Scheduled Meeting on January 13, 2014.

VOTE: 6 to 0.

Mayor

Attest:

City Secretary