

RESOLUTION 15 - 7

A RESOLUTION REVISING AND REPLACING THE POLICY FOR PROVIDING INFORMATION REQUESTED UNDER THE FREEDOM OF INFORMATION ACT (FOIA) IN THE TOWN OF OCEAN VIEW

WHEREAS, requests are made of the Town of Ocean View for copies of public records, certain documents, correspondence and reports by person(s); and

WHEREAS, the Town's existing FOIA policies as adopted by Resolution 08-05 should be revised and replaced to reflect changes to the FOIA; and

WHEREAS, the Town is not required to create records that do not exist at the time the request is made; and

WHEREAS, all requests for Law Enforcement Records fall under the jurisdiction and policies and procedures of the Ocean View Police Department and shall be immediately forwarded to the Chief of Police or made directly at the Ocean View Police Department.

NOW THEREFORE, IT IS HEREBY RESOLVED that Resolution 08-05 is hereby repealed in its entirety; and,

IT IS HEREBY FURTHER RESOLVED that the Mayor and Town Council of Ocean View authorize the adoption of the following revised Freedom of Information Act (FOIA) policy:

TOWN OF OCEAN VIEW FREEDOM OF INFORMATION ACT (FOIA) POLICY

SECTION 1 - PURPOSE

The purpose of this policy is to prescribe procedures relating to the inspection and copying of public records retained by the Town of Ocean View pursuant to Chapter 100 of Title 29 of the Delaware Code, the State of Delaware Freedom of Information Act. It is the Town's goal in establishing and maintaining this policy to maximize the amount of information available to the public, establish a reasonable fee structure for providing public records, and streamline procedures used to disseminate this information.

It is the intent of the Town of Ocean View that public business be performed in an open and public manner so that the citizens shall be advised of the performance of officials and their decisions. In accordance with FOIA, the public has the right to reasonable access to public records. The Act provides that it is the responsibility of the Town to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. It is the policy of the Town of Ocean View that all employees shall comply with FOIA and all requests for information shall be processed in the manner prescribed below.

SECTION 2 - DEFINITIONS

"Department" - a department of the Town of Ocean View.

"Exempt" - information determined by the Town Manager and/or the Town Solicitor not to constitute a Public Record as that term is herein defined and any records deemed not to be public under 29 Del. C. 100002(l).

"FOIA" - 29 Del. C. Chapter 100, the State of Delaware Freedom of Information Act.

"FOIA Coordinator" - the Town Manager of the Town of Ocean View.

"Public Record" information that meets the definition of a "Public record" under 29 Del. C. § 10002(l), including any amendments thereto.

"Requestor" - any individual, organization, or business that submits a request for information under the FOIA.

"Town" - the Town of Ocean View.

SECTION 3 - AVAILABILITY OF RECORDS

3.1) Access

- (A) The Town will provide reasonable access and facilities for reviewing Public Records during regular business hours.
- (B) The Town shall make all requested records available for review by Requestor unless such records or portions of records are determined to be Exempt.

3.2) Town Records' Review

- (A) Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed Exempt are removed.
- (B) Upon request, the Town will provide a log of records which may have been deemed Exempt. The log will include the following information:
 - (1) The document's author;
 - (2) The addressee;
 - (3) The date of the document;
 - (4) The title of the document or a brief explanation of the document's contents; and
 - (5) The statutory exemption.
- (C) Town brochures, pamphlets, informational bulletins, and other such information are not subject to this policy.

SECTION 4 - REQUEST FOR PUBLIC RECORDS

Requests for access to records shall be made in writing to the Town and shall adequately describe the record sought in sufficient detail to enable the Town to locate the record with reasonable effort. The Requestor shall be as specific as possible when requesting records. All FOIA requests should be forwarded to the Town Manager. The Town shall provide a FOIA request form to any Requestor who requests such a form. The Town may use the form promulgated by the State of Delaware or the Town may use a form of its own creation. No request will be denied solely because it is not on a standardized form.

To assist the Town in locating the requested records, the Town may request that the Requestor provide additional information known to the Requestor, such as the types of records, dates, parties to correspondence, and subject matter of the requested records. If necessary, the Town Manager will consult with the Town Solicitor to determine if the requested records are a Public Record or if the requested records are Exempt.

If a Requestor wants to review original Public Records, a staff member shall be assigned to monitor the review to ensure that the integrity of all Public Records is maintained. A monitor may be required at other times at the discretion of the Town Manager or designee.

4.1) Types of Access Allowed/Requests for Records

- (A) Public Records shall be open to public inspection and copying.
- (B) Public Records must be provided during regular business hours.
- (C) Reasonable access to Public Records cannot be denied.
- (D) If the requested Public Record is not in active use and in storage, then the Town may schedule an appointment to provide access to the Requestor.

4.2) Response to Requests

- (A) The Town shall make every reasonable effort to respond to a request within fifteen (15) business days of submittal or within the period required by the FOIA, whichever is longer. If access cannot be provided within fifteen (15) business days, the Town shall cite one (1) of the reasons listed in the FOIA why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.
- (B) In providing access to Public Records, the Town Manager may take necessary and reasonable action to protect the Town's Public Records and

to prevent excessive and unreasonable interference with the discharge of the Town's functions. This policy does not require the Town to make a compilation, summary, or report of information.

- (C) If the Town denies a request in whole or in part, the Town shall indicate to the Requestor the reasons for the denial.

4.3) Appeals

- (A) A Requestor may appeal a denied request by submitting a written appeal to the Town Council within fifteen (15) days of the denial. The written appeal shall be titled "Appeal of FOIA Request" and shall state with particularity the basis for the appeal; or,
- (B) The Requestor may file suit in accordance with 29 Del. C. §10005.

SECTION 5 - FEES FOR COPYING AND RESEARCH

The fees to be charged for complying with a request under the FOIA shall not exceed any one or more of the following items, as applicable:

5.1) Duplicating/Copying Fees and Costs

The following are duplicating/copying charges for providing Public Records:

- (A) 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".
- (B) 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.
- (C) 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.
- (D) Physical copies of 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: cassette tapes, computer disks, CDs, DVDs, etc.) and administrative costs.

(E) Electronic copies of electronically generated records

In the event that requests for records maintained in an electronic format can be electronically provided to the Requestor, only the administrative charges in preparing the electronic records will be charged.

(F) Other Costs

Any other actual costs associated with fulfilling a request for information, such as postage, shall be at the expense of the Requestor.

5.2) Administrative Fees

Administrative fees will be in addition to any other charges incurred under this section for copying fees. The Town 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. The following are administrative fees for providing Public Records:

(A) Actual Labor Costs

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 will be billed to the Requestor 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 shall not include any cost associated with the Town's legal review of whether any portion of the requested records is exempt from FOIA.

(B) Outside Contractor Costs

If the Town does not have the resources or equipment to duplicate requested records, the Town, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the Requestor will be liable for payment of these costs.

(C) Cost Estimates

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

5.3) Waiver of Fees

The Town Manager or designee shall have the authority to waive a fee for a FOIA request if:

- (A) The public record is already available in duplicate form (i.e., if the Town has existing extra copies);
- (B) The request for public record is made by an individual who is entitled to information under the FOIA and who submits written proof to the Town that the individual is then receiving public assistance, or, if not receiving public assistance, showing inability to pay the cost because of indigence. A person shall be considered indigent if that person's income level is at or below the federal poverty level as established by the Bureau of the Census.

5.4) Payment

- (A) The Town shall require a good faith deposit toward the charges, costs, or fees of any request for which the charges, costs, or fees are estimated to be over \$25.00, and the Requestor must pay the deposit before the Town commences any action on the request. In addition, the Town may require all or any portion of the charges, costs, or fees due hereunder to be paid prior to any service being performed.
- (B) Payment for any outstanding duplicating/copying charges and administrative fees charges will be due at the time copies are released to the requestor.
- (C) The Town reserves the right to refuse to make copies for Requestors who owe the Town an outstanding balance for prior FOIA request copy charges.


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AND BE IT FURTHER RESOLVED that this resolution shall become effective upon its adoption by a majority of all members elected to the Town Council of Ocean View.

TOWN OF OCEAN VIEW

By: 
Mayor

Attest: 
Town Clerk

{SEAL}

Adopted: February 9, 2016