

TOWN OF HENLOPEN ACRES

FREEDOM OF INFORMATION ACT 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 Henlopen Acres pursuant to 29 Del.C. Chapter 100, the State of Delaware Freedom of Information Act, (FOIA). It is the Town’s goal in establishing this policy to maximize the amount of information available to the public, establish a reasonable fee structure for providing public records, and to streamline procedures used to disseminate this information. 29 Del.C. §10003 reads as follows:

(a) All public records shall be open to inspection and copying by any citizen of the State 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. If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expeditiously as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.

(b) A custodian of a record for the appropriate public body who receives a request for a public record shall grant access to a public record or deny access to a record as soon as possible, but not later than 15 business days after receiving the request for a public record. The Department of Justice shall establish and provide a standard request form to public bodies for persons making requests pursuant to this chapter. Public bodies shall use this form exclusively and shall make it conveniently available for copying, completion, and/or submission via the internet, e-mail, U.S. mail or at the public body offices.

(c) Additional time shall be allowed beyond the 15 business days provided for in subsection (b) of this section when a request is voluminous records, requires legal advice or a record is in storage or archived. In any of these cases, the requestor shall be advised by the custodian of a record, within 15 business days after the custodian of a record receives the request, stating the need for additional time. Such additional time provided for in this subsection shall be reasonable.

(d) It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records.

This policy applies to the Town in dealing with requests from the public for information as set forth above. It does not apply to the Town in its normal course of business with Federal, State, or local agencies, nor to private parties with whom the Town is conducting business (permit, contractual agreement, licenses, etc.), provided the public records are germane to the business being conducted.

It is the intent of the Town of Henlopen Acres 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 public body 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 Henlopen Acres that all employees shall comply with FOIA and all requests for information shall be processed in the manner prescribed below.

SECTION 2 – DEFINITIONS

“Town” – the Town of Henlopen Acres

“Department” – a department of the Town of Henlopen Acres

“Exempt” – information determined by the Town Manager and/or City Solicitor to constitute a record that shall not be deemed public in accordance with 29 Del.C. §10002(d).

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

“Records Manager” – the Town Manager of the Town of Henlopen Acres or his/her designee.

“Requestor” – any individual, organization, or business that submits a request for information under FOIA.

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 by the Town Manager to be exempt pursuant to 29 Del.C. §10002(d) – see Section 6 of this policy for listing.

3.2) Town Records Review

- (A) Prior to disclosure, records will be reviewed to insure 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 non-public. 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) The types of records deemed exempt are as contained in 29 Del.C. §10002(d) Section 6.
- (D) Town brochures, pamphlets, informational bulletins, and other such information are not subject to this policy.

SECTION 4 – REQUEST FOR PUBLIC RECORDS

Request for access to records shall be made in writing and shall adequately describe the record sought in sufficient detail to enable the Town to locate the record with reasonable effort. The Town shall make every reasonable effort to assist the requestor in identifying the record being sought. Any request for a “public record(s)” shall ascertain from the requesting party the specific materials requested.

If it is not sure that a requested item is a “public record”, the request for documentation should be forwarded to the Town Manager for consultation with the Town Solicitor in determining if the requested documents are a “public record” and fall under the jurisdiction of FOIA.

If a requesting party wants to review original materials, a staff member shall be assigned to monitor the review to insure that the integrity of all materials 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) Records shall be open to public inspection and copying.
- (B) Must be provided during regular business hours.
- (C) Reasonable access to records cannot be denied.
- (D) Reasonable facilities for copying cannot be denied.
- (E) If the requested record is not in active use and in storage, then an appointment should be made for access.

4.2) Response to Requests

- (A) The Town shall make every reasonable effort to respond to an request within fifteen (15) business days.
- (B) 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) Denied requests may be appealed by submitting to the Town Commissioners a written appeal that specifically indicates “Appeal of FOIA Request” and identifies the reason or reasons for reversal or denial.
- (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.

The following are duplicating/copying charges for providing public records:

(A) Standard Sized, Black and White Copies

Cost for duplication or publication, including labor, for standard sized, black and white public records shall be \$0.25 per page, for 8.5" x 11", 8.5" x 14", and 11" x 17" sized paper

(B) Computer/Electronically Generated

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, video tapes, computer disks costs) and administrative costs. Actual costs shall be assessed for copying computer generated records and providing other materials such as video tapes, computer disks, etc.

(1) 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.

(C) The Town shall have discretion based on circumstances involved to make decisions regarding copying.

5.2) Administrative Fees

The following are administrative fees for providing public records:

(A) Actual Labor Costs

In calculating the cost of labor incurred, the Town may not charge more than the hourly wage of the lowest paid Town employee capable of retrieving the information necessary to comply with the request. Labor charges will be billed to the requestor per quarter hour. Labor charges will be in addition to any duplicating/copying charges. Charges for actual labor costs include:

- (1) Staff time associated with processing FOIA requests;
- (2) Locating and reviewing files;
- (3) Monitoring file reviews;
- (4) Generating computer records (electronic or print-outs); and
- (5) Any other time rendered by the employee in researching, examining, developing, duplicating, reviewing, and separating exempt from non-exempt information that has been requested.

(B) Other Costs

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

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.

The requester shall be provided an estimate of the costs involved to fulfill their request for information. 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.

5.3) Waiver of Fees

The Town Manager or designee shall have the authority to determine if a fee for a FOIA request shall be waived and the following criteria shall be used to render such a decision:

- (A) The public record is already available in duplicate form (extra copies);
- (B) The request for public record is made by an individual who is entitled to information under FOIA and who submits an affidavit, provided by the Town, which shall state that the individual is then receiving public assistance, or, if not receiving public assistance, stating facts 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 Census.
- (C) Fees of \$1.00 or less shall be waived.

No written request will be required or charges levied for requests to review specific documents which are required by ordinance to be made available to the public by the Town Manager.

5.4) Payment

- (A) Payment for copies and/or administrative charges will be due at the time copies are released to the requestor. The Town reserves the right to refuse to make copies for requestors who have outstanding balances.
- (B) The Town may require pre-payment of copying and administrative charges prior to mailing copies of requested records.
- (C) A good faith deposit must be provided in advance for those requests for which the fees are estimated to be over \$50.00. The deposit shall not exceed one-half (1/2) of the total estimated fee.
- (D) The fee must be received before copies are delivered or before searching and reviewing commences, if a deposit is required.

SECTION 6 – EXEMPT RECORDS

The records that are deemed non-public are as contained in 29 Del.C. §10002(d).

ADOPTED: January 20, 2012