

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311; 314; 29 Delaware Code, Section 10112
(18 Del.C. §§311; 314 & 29 Del.C. §10112)

PROPOSED

PUBLIC NOTICE

908 Procedures for Responding to Freedom of Information Requests

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 908 relating to requests from the public for information under the *Freedom of Information Act*. The docket number for this proposed amendment is 1379.

The purpose of the proposed Regulation 908 is to establish procedures for providing information requested by the public and guaranteeing that information that is provided can be provided and, if so, is provided in a timely fashion. The text of the proposed regulation is reproduced in the September 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday October 4, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

908 Procedures for Responding to Freedom of Information Requests

1.0 Definitions

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

"Commissioner" means the Commissioner of the Delaware Insurance Department.

"Department" means the Delaware Department of Insurance.

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

"FOIA Coordinator" is defined as an individual designated by a public body to accept and process requests for public records under the act. The Commissioner shall designate the individual who shall be the FOIA Coordinator. The FOI Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

"Public record" is information of any kind, owned, made, used, retained received, produced, composed, drafted or otherwise compiled or collected by the Department 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 and not protected from disclosure by law.

"Writing" is defined as "handwriting, typewriting, printing, photo stating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

"Written request" is defined as "a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means."

2.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for information as set forth in 29 Del.C. Chapter 100.

3.0 Records Request, Response Procedures and Access

- 3.1 All FOIA Requests shall be made in writing to the Department, addressed to: FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall provide reasonable assistance to the public in identifying and locating records to which they are entitled access.
- 3.2 The Department shall respond, in writing, within ten working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether:
 - 3.2.1 the Department will permit inspection of the public records;
 - 3.2.2 the Department requires additional time beyond the 10 business days for circumstances to include but not limited to, the request is for voluminous records, requires legal advice, for the public record is in storage or archived. In the event the Department is unable to make the requested public records available for inspection with the 10 business day period, the Department shall provide an expected time at which they will be made available; or
 - 3.2.3 if it does not permit such inspection, the reason or reasons for such refusal.
- 3.3 Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed non-public pursuant to 29 Del.C. §10002(g) are removed. 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(g).
- 3.4 After receiving the response of the Department to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.
- 3.5 All FOIA Requests shall be coordinated by the FOIA Coordinator.
- 3.6 The Department shall provide reasonable access for reviewing public records during regular business hours. The Department shall make the requested public records available unless the records or portions of the records are determined to be excluded from the definition of a "public record" pursuant to 29 Del.C. §10002(g).

4.0 Fees

- 4.1 Administrative Fees
 - 4.1.1 Charges for administrative fees include:
 - 4.1.1.1 Staff time associated with processing FOIA Requests will include:
 - 4.1.1.1.1 Locating and reviewing files;
 - 4.1.1.1.2 Monitoring file reviews;
 - 4.1.1.1.3 Generating computer records (electronic or print-outs);
 - 4.1.1.1.4 Review of request by legal counsel
 - 4.1.1.1.5 Other work items as necessary per request.
 - 4.1.2 Calculation of Administrative Charges:
 - 4.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hours increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.
 - 4.1.2.1 Appointment Rescheduling/Cancellation – Requestors 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 administrative charges incurred by the Department in preparing the

requested records. The Department shall prepare an itemized invoice of these charges and mail to the requestor for payment.

4.2 Photocopying Fees – The following are charges for photocopies of public records made by Department personnel:

4.2.1 Standard Sized, Black and White Copies.

4.2.1.1 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 \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:

4.2.1.1.1 8.5" x 11"

4.2.1.1.2 8.5" x 14" and

4.2.1.1.3 11" x 17"

4.2.2 Oversized Copies/Printouts.

4.2.2.1 The charge for copying oversized public records shall be as follows:

4.2.2.1.1 18" x 22" \$2.00 each

4.2.2.1.2 24" x 36" \$3.00 each

4.2.3 Color Copies/Printouts

4.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:

4.2.3.1.1 8.5" x 11"

4.2.3.1.2 8.5" x 14 and

4.2.3.1.3 11" x 17"

4.2.4 Microfilm and /or Microfiche Printouts.

4.2.4.1 Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.50 per printed page.

4.3 Electronically Generated Records.

4.3.1 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: magnetic tape, diskette, or compact disc costs) and administrative costs.

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

4.4 Payment

4.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.

4.4.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

5.0 Effective Date of this Regulation.

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

14 DE Reg. 144 (09/01/10) (Prop.)