

DELAWARE ACADEMY of PUBLIC SAFETY and SECURITY
Freedom of Information Act (FOIA) Procedures

1.0 Purpose

The purpose of this document is to prescribe procedures relating to the inspection and copying of public records retained by Delaware Academy of Public Safety and Security("DAPSS") pursuant to 29 **Del.C.** Chapter 100, the Freedom of Information Act ("FOIA"). It is DAPSS's goal in establishing this procedure to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.

This procedure applies to DAPSS in dealing with requests from the public for information as set forth in the Delaware Freedom of Information Act. A new and integral part of the FOIA procedure is a procedure outlined to address the confidential treatment of information submitted to DAPSS. This confidentiality procedure is a necessary part of the FOIA procedure, in that any information submitted to DAPSS is subject to public review unless deemed to be confidential by the Executive Director in accordance with Delaware Code, federal law and the criteria and procedures established in this procedure.

It is the intent of DAPSS, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of DAPSS officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides that it shall be the responsibility of the public body to establish rules and procedures regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA shall be processed in the manner prescribed below.

2.0 Definitions

"**Confidential information**" means information determined by the Head of School of DAPSS to constitute a trade secret, commercial or financial information which is of a confidential nature or student or employee information that must remain confidential according to state or federal law.

"**DAPSS**" means Delaware Academy of Public Safety and Security

"**Requestor**" shall mean any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.

"**Responsible Official**" means:

For a Corporation: A President, Vice-President, Secretary or Treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by DAPSS including a successor in interest to one of these persons if DAPSS is notified in writing of the substitution of the party.

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For a Partnership or Sole Proprietorship: A general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by DAPSS including a successor in interest to one of these persons if DAPSS is notified in writing of the substitution of the party.

For a Municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official including a successor in interest to one of these persons if DAPSS is notified in writing of the substitution of the party.

“Head of School” means the Head of School/School Leader of DAPSS or the Head of School/School Leader's designee.

“Trade Secret” means a formula, pattern, device or compilation of information which may be used to obtain competitive advantage over others.

3.0 Availability of Records

3.1 Access

3.1.1 DAPSS will provide reasonable access and facilities for reviewing public records during regular business hours.

3.1.2 DAPSS shall make all requested records available for review by a Requestor unless such records or portions of records are determined by the Head of School to be confidential in accordance with Section 6 of this procedure or otherwise exempted from disclosure as records deemed non-public pursuant to 29 Del.C. §10002(l).

3.1.3 DAPSS reserves the right to deny any request in part or in full which does not comply with the Form of Request procedures pursuant to Section 4.1 of this procedure and/or the provisions of the Freedom of Information Act, as amended.

3.2 DAPSS Records Review

3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.

3.2.2 Upon request, DAPSS will provide a log of records which may have been deemed non-public. The log will include the following information:

3.2.2.1 The document's author;

3.2.2.2 The addressee;

3.2.2.3 The date of the document;

3.2.2.4 The title of the document or a brief explanation of the document's contents; and

3.2.2.5 The statutory exemption.

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3.2.3 The types of records deemed non-public are as contained in 29 Del.C. §10002(1).

4.0 Record Request and Response Procedures

4.1 Form of Request

4.1.1 Requests for access to records shall be made either through DAPSS's website or in writing to DAPSS's Development Director (See Exhibit 1). The request shall adequately describe the records sought in sufficient detail to enable DAPSS to locate the records with reasonable effort. DAPSS shall make reasonable effort to assist the Requestor in identifying the record being sought. The request may be denied in part or in full and returned to the Requestor for the following reasons:

4.1.1.1 The request does not adequately describe the records; or

4.1.1.2 The request requires DAPSS to perform research or to assemble information that has not been compiled; or

4.1.1.3 The request is overly broad. For example, a request for all email records of an employee or of DAPSS would be overly broad. The request should be limited to a particular subject, time frame, and/or recipient/sender.

4.2 DAPSS Response to Requests

4.2.1 DAPSS shall make reasonable effort to determine within ten (10) business days after the receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.

4.2.2 If DAPSS denies a request in whole or in part, DAPSS shall indicate to the Requestor the reasons for the denial.

4.3 Reproduction of Records

4.3.1 The copying of any requested public records may be performed by DAPSS personnel and may be provided to the Requestor as follows:

4.3.1.1 If 25 pages or less are requested to be copied, DAPSS may, if time and personnel are available, make the copies at the time of the review. If personnel are not available, DAPSS may arrange to copy and mail the records to the Requestor. In the alternative, the Requestor may elect to pick up copies during regular business hours and submit payment at that time.

4.3.1.2 If over 25 pages are requested to be copied DAPSS may arrange to copy and mail the records to the Requestor. In the alternative, the Requestor may elect to pick up copies during regular business hours and submit payment at that time.

4.3.1.3 If over 250 pages are requested to be copied, the Requestor may be required to bring in both copier and personnel to make the desired copies.

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4.3.1.4 Fragmentation of requests, in order to circumvent the 250 page limit, shall not be allowed.

4.3.1.5 DAPSS shall have discretion based on circumstances involved to make decisions regarding copying.

5.0 Fees

5.1 Administrative Fees:

5.1.1 Charges for administrative fees include:

5.1.1.1 Staff time associated with processing FOIA requests to include:

5.1.1.1.1 Locating and reviewing files;

5.1.1.1.2 Monitoring file reviews;

5.1.1.1.3 Generating computer records (electronic or print-outs);

5.1.1.1.4 Preparing logs of records deemed non-public; and

5.1.1.1.5 Other work items as necessary per request.

5.1.2 Calculation of Administrative Charges: Administrative charges will be calculated as follows:

5.1.2.1 Administrative charges will be billed to the Requestor per quarter hour. These charges will be billed at the current, hourly pay rate for the personnel involved, plus benefits (pro-rated for quarter hour increments). Administrative charges will be in addition to any copying charges.

5.1.2.2 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 DAPSS in preparing the requested records.

DAPSS will prepare an itemized invoice of these charges and mail to the Requestor for payment.

5.2 Photocopying Fees - The following are charges for photocopies of public records made by DAPSS personnel:

5.2.1 Standard Sized, Black and White Copies

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5.2.1.1 The charge for copying standard sized, black and white public records shall be \$0.25 per sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"
8.5" x 14"
11" x 17"

5.2.2 Oversized Copies/Printouts

5.2.2.1 The charge for copying oversized public records (including, but not limited to: blueprints, engineering drawings, GIS print-outs, and maps) shall be as follows:

18" x 22" \$2.00 each
24" x 36" \$3.50 each

5.2.3 Color Copies/Printouts

5.2.3.1 The charge for standard sized, color copies or color printouts shall be \$0.25 per sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"
8.5" x 14"
11" x 17"

5.2.4 Microfilm and/or Microfiche Printouts

5.2.4.1 Microfilm and/or microfiche printouts, made by DAPSS personnel on standard sized paper, will be calculated at \$0.25 per printed page.

5.2.5 Electronically Generated Records

5.2.5.1 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.

5.2.5.2 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.

5.2.6 Other Copying Fees

5.2.6.1 DAPSS, at its discretion, may arrange to have records copied by an outside contractor if DAPSS does not have the resources or equipment to copy such records. In this instance, the

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Requestor will be liable for payment of these costs.

5.3 Exemptions

5.3.1 The first \$25.00 in FOIA charges shall be waived for not-for-profit organizations working in the public interest on the condition that such organizations provide, along with their FOIA request, proof of tax-exempt status and a signed affidavit from an officer of the governing body of the organization which indicates that the Requestor is authorized to request the information on behalf of the organization.

5.4 Payment

5.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the Requestor. DAPSS reserves the right to refuse to make copies for Requestors who have outstanding balances.

5.4.2 DAPSS may require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or in preparing logs of records deemed non-public.

6.0 Requests for Confidentiality

A person may request that records or portions of records submitted to DAPSS be treated as confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.

The following section sets forth procedures and criteria by which DAPSS will determine confidentiality of records or portions of records.

6.1 Procedure

6.1.1 In order for DAPSS to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Executive Director at the time the record is submitted. The request shall provide substantiation (following guidelines in 29 **Del.C.** §10002(1)) for the assertion that the information should be treated as confidential. The request shall contain the following information:

6.1.1.1 The measures taken to guard against undesired disclosure of the information to others;

6.1.1.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

6.1.1.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

6.1.1.4 Verification that significant effort or money has been expended in developing the information.

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6.1.2 The following information shall be submitted:

6.1.2.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review).

The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;

6.1.2.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and

6.1.2.3 Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.

6.1.3 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Head of School in making a determination of confidentiality pursuant to this privilege.

6.1.4 After a final determination of confidentiality has been issued by the Head of School, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if DAPSS determines that:

6.1.4.1 The Responsible Official notified DAPSS in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

6.1.4.2 The later submission identifies with particularity the prior confidentiality determination; and

6.1.4.3 The notice to DAPSS met the requirements of Section 6.1.2 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

6.1.4.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.2 Criteria

6.2.1 The Executive Director may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

6.2.1.1 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;

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6.2.1.2 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;

6.2.1.3 No statute specifically requires disclosure of the information;

6.2.1.4 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and

6.2.1.5 Verification that significant effort or money has been expended in developing the information.

6.3 Final Determination

6.3.1 The Head of School will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Head of School's determination.

6.3.2 If the Head of School determines that disclosure of the information would violate 29 **Del.C.** §10002(lp)(2), the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify DAPSS in writing of such changes.

6.3.3 If the Head of School finds that the information is not entitled to confidential treatment, the information will be considered public.

6.4 Defense of Head of School's Determination

6.4.1 Verification of Information

6.4.1.1 There will be instances in which the Head of School may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Head of School relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

6.4.2 Information Determined Confidential

6.4.2.1 If the Head of School makes a confidentiality determination that certain information is entitled to confidential treatment, and DAPSS is sued by a Requestor for disclosure of that information, DAPSS will:

6.4.2.1.1 Notify each affected party of the suit;

6.4.2.1.2 Call upon each affected party to furnish assistance where necessary in preparation of DAPSS's defense; and

6.4.2.1.3 Defend the final confidentiality determination, but expect the affected party to

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cooperate to the fullest extent possible in the defense.

7.0 Effective Date of this Procedure

These procedures will become effective October 19, 2016.

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