APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

CERTIFICATION FOR BENEFICIARY STATUS UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT

1. Identity of Lead Agency

State of Delaware ("Beneficiary"), by and through the Office of the Governor (or, if not a State, the analogous Chief Executive) of the Appendix D-1 and Appendix D-1A entity on whose behalf the Certification Form is submitted: (i) hereby identifies Department of Natural Resources & Environmental Control ("Lead Agency") as the Lead Agency for purposes of the Beneficiary's participation in the Environmental Mitigation Trust ("Trust") as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY'S LEAD AGENCY CONTACT INFORMATION:

Contact:	Ali Mirzakhalili Director, Division of Air Quality
Address:	100 W. Water Street Suite 6A
Phone:	302-739-9402
Fax:	302-739-3106
Email:	VWMitigation@state.de.us

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement ("Trust Agreement"). The Beneficiary's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 and Appendix D-1A to the Trust Agreement, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary's laws do not prohibit it from being a Trust Beneficiary; (iii) either (a)

the Beneficiary's laws do not prohibit it from receiving or directing payment of funds from the Trust, or (b) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust, then prior to requesting any funds from the Trust, the Beneficiary shall obtain full legal authority to receive and/or direct payments of such funds within two years of submitting this Certification Form; and (iv) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust and fails to demonstrate that it has obtained such legal authority within two years of submitting this Certification Form, it shall become an Excluded Entity under the Trust Agreement and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1 of the Trust Agreement.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trust for credit to the Beneficiary's allocation.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties (including the Settling Defendants) to the Partial Consent Decree (Dkt. No. 2103-1) and the parties (including the Defendants) to the Second Partial Consent Decree (Dkt. No. 3228-1), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles and the 3.0 Liter Subject Vehicles (jointly, "Subject Vehicles"), whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties.

7. Publicly Available Information

The Beneficiary certifies that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered; and (iii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

The Beneficiary certifies, for the benefit of the Parties (including the Settling Defendants) to the Partial Consent Decree and the Parties to the Second Partial Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

(a) Shall not deny registration to any Subject Vehicle based solely on:

i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or

ii. Emissions resulting from such a defeat device or AECD; or

iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:

i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or

ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or

iii. Other emissions-related vehicle characteristics that result from the modification; or

iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 9(a)-(b).

10. Reliance on Certification

The Beneficiary acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon, this Appendix D-3 Certification, or a subsequent communication from the Lead Agency designating new or additional authorized individuals, as setting forth the Lead Agency and the authorized individuals who may direct the Trustee with respect to all of the Beneficiary's rights and duties under the Trust Agreement. The Beneficiary and its delegated Lead Agency, including all authorized individuals, agree to comply with all security procedures, standard payment and signatory authorization protocols, as well as procedures for designating new or additional authorized individuals, as set forth by the Trustee.

FOR THE GOVERNOR (or, if not a State, the analogous Chief Executive):

Signature: John C. Carney

Name: John Carney
Title: Governor, State of Delaware
Date: 11/16/2017
Location: Dover, DE

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:

Name: Matt Denn
Title: Attorney General, State of Delaware
Date: 11/13/2017
Location: Dover, DE

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:

Name: Shawn M. Garvin
Title: Secretary, Department of Natural Resources & Environmental Control
Date: 11/7/17
Location: Dover, DE

ATTACHMENT

This attachment show a copy of Delaware's web page whereby Delaware has and will continue to make available (i) all documentation and records submitted by Delaware in support of funding requests; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, for each until the Termination Date of the Trust as required by Paragraph 6.8 of the Trust Agreement.

These records may be accessed by the general public at http://www.dnrec.delaware.gov/air/Pages/VWMitigationPlan.aspx Notification of public workshops and meetings associated with the development of the VW Settlement – Beneficiary Mitigation Plan will be announced via this website as well as the Delaware Public Calendar (https://publicmeetings.delaware.gov/). On March 23, 2017, Delaware held a workshop to gain public input on the development of the draft Beneficiary Mitigation Plan (see https://publicmeetings.delaware.gov/Meeting/51374). Additional workshops and public meetings will be scheduled in 2018 once the Beneficiary status has been established.

Documents and meetings associated with the VW settlement are subject to Delaware's Freedom of Information Act (Title 29 Chapter 100). The FOIA statute as well as the Department of Natural Resources and Environmental Control's regulation that establish the procedures for requesting confidentiality of documents set out in **8 DE Admin Code 900** are also included.

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Volkswagen Environmental Mitigation Plan

Volkswagen Settlement with the EPA

On Oct. 25, 2016, a Partial Consent Decree was finalized between the U.S. Department of Justice, the Volkswagen (VW) Corporation, and its subsidiaries regarding the installation and use of emissions-testing "defeat devices" in over 500,000 vehicles sold and operated in the United States beginning in 2009. Use of these defeat devices has increased air emissions of nitrogen oxide (NOx), resulting in adverse impacts to air quality and violating the federal Clean Air Act.

The VW Environmental Mitigation Trust has been established as part the settlement. States are to identify and provide funds to projects that mitigate air quality impacts from high-emitting diesel vehicles and engines. The State of Delaware's share of the Environmental Mitigation Trust is approximately $9 million. The Trust establishes a process to administer and receive the funds for eligible mitigation actions.

Delaware's Mitigation Plan

In response to the Settlement, DNREC's Division of Air Quality has developed a proposed mitigation plan to accept and distribute these funds to eligible projects. The proposed plan is focused on the eligible types of mitigation actions that can produce the greatest air quality benefit in terms of NOx emission reductions, reduce public exposure, and promote clean vehicle technologies. The proposed state mitigation plan can be found here.

Getting Delaware citizens involved

States are required to develop plans that ensure they achieve the greatest air quality benefit in terms of NOx emission reductions, reduce public exposure, and promote clean vehicle technologies. Initial state plans are due 60 days after a Mitigation Trustee is named.

DNREC held a public meeting March 23 on the VW environmental mitigation plan. The following links provide more information:

- Meeting notice
- Department handout - Delaware request for comment-Options
- Department handout - Appendix D-2 of consent decree
- Department presentation
- Meeting sign-in sheet
- Meeting transcript
- Comments Received:
  - MAPGA - Ellen Valentino
    - Ellen Valentino (second comments)
  - Yborra&Associates - Stephe Yborra
  - Nemours - Katherine King and attachment
  - Delaware Department of Education - Secretary Susan Bunting
  - Fuel Cell & Hydrogen Energy Association - Bill MacLeod
  - Caterpillar - Glen Luksik and Attachment 1, Attachment 2, Attachment 3
  - Public Comments - Terri Brixen
  - Sierra Club - Joshua Berman/Stephanie Herron
  - Proterra - Kent Leacock

- NGVAmerica - Matthew Godlewski
- Chesapeake Utilities - Dean Holden
- Public Comments - Coralie Pryde
- University of Delaware - Dr. Ajay K. Prasad

To learn more about upcoming activities, please click here to sign up for the VW Mitigation Plan email Listserv list.

Resources and Links

- EPA and Volkswagen
- VW Settlement Appendix D
- Diesel Technology Forum
  - Diesel Technology VW Fact Sheet
- Natural Gas Vehicles for America website
  - NGVA VW Fact Sheet
- Frequently Asked Questions (FAQ) For Beneficiaries to the Volkswagen Mitigation Trust Agreement

Contact:
For more information, please email VW_Mitigation_Plan@state.de.us or Deanna Cuccinello, or call 302-739-9402

Date Revised: April 6, 2017

Office of the Registrar of Regulations
Legislative Council,
State of Delaware

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY

900 Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.
Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

The following words and terms, when used in this policy, shall have the following meaning unless the context clearly indicates otherwise:
"**Agency**" means the Department of Natural Resources and Environmental Control or DNREC.
"**FOIA**" means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.
"**FOIA Coordinator**" shall mean the person designated by the Secretary to receive and process FOIA Requests.
"**FOIA Request**" or "**Request**" means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code and in accordance with the policy hereunder.
"**FOIA Request Form**" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.
"**Non-Custodial Records**" shall have the meaning set forth in Section 3.6.
"**Public Record**" shall have the meaning set forth in 29 **Del.C.** §10002.
"**Requesting Party**" shall mean the party filing a FOIA Request.
"**Secretary**" means the Secretary of the Department of Natural Resources and Environmental Control or DNREC.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the proper form. Copies of the FOIA Request Form may be obtained from the Agency's website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at: DNREC FOIA Coordinator, OTS, 89 Kings Highway, Dover, DE 19901, by email to: DNREC_FOIA_Request@state.de.us, by fax at: (302) 739-6242; or via online request form, which may be found on the Agency's home page at www.dnrec.delaware.gov.

3.3 FOIA Coordinator

3.3.1 The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to §3.4; the date of the Agency's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to §3.7 and the names of individuals who conducted such reviews; the amount of copying and/or administrative fees assessed; and the date of final disposition.

3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (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 fifteen (15) business days, the Agency 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.

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

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with § 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with §3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2. Before requesting any Non-Custodial Records, the Agency shall provide a 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.

3.7 Review by Agency

3.7.1 Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del. C. §10002(g) 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(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: 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 $0.10 per sheet (i.e., $0.10 for a single-sided 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".

4.1.1.2 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

4.1.1.3 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.

4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a 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.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated 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 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 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.

4.4 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.

4.5 Payment

4.5.1 Payment of all fees shall be due no later than the time the records are released to the Requesting Party.

4.5.2 The Agency may require pre-payment of all fees prior to performing any services hereunder.

4.5.3 Appointment Rescheduling or Cancellation: Requesting Parties 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 charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0 Requests for Confidentiality

6.1 A person may request that certain records or portions of records submitted to DNREC be held 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 DNREC will determine confidentiality of records or portions of records.

6.2 Procedure - In order for DNREC 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 Secretary at the time the record is submitted. The request shall provide substantiation for the allegation that the information should be treated as confidential. The request shall contain the following information:

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

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

6.2.3 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

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

6.3 The following information shall be submitted:

6.3.1 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;

6.3.2 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

6.3.3 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.

6.4 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 Secretary in making a determination of confidentiality pursuant to this privilege.

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

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

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

6.5.3 The notice to DNREC met the requirements of Section 6.3 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

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

6.6 Criteria

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

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

6.6.3 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;

6.6.4 No statute specifically requires disclosure of the information;

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

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

6.7 Final Determination - The Secretary 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 Secretary's determination.

6.7.1 If the Secretary determines that disclosure of the information would violate 29 **Del.C.** §10002(g)(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 DNREC in writing of such changes.

6.7.2 If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

6.8 Defense of Secretary's Determination

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

6.8.2 Information Determined Confidential - If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and DNREC is sued by a requestor for disclosure of that information, DNREC will:

6.8.2.1 Notify each affected party of the suit;

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

6.8.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

7 DE Reg. 1560 (5/1/04)

15 DE Reg. 864 (12/01/11)

Part X
General Regulations for State Agencies
Chapter 100
FREEDOM OF INFORMATION ACT

§ 10001 Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this State, this chapter is adopted, and shall be construed.

(60 Del. Laws, c. 641, § 1; 65 Del. Laws, c. 191, § 1.)

§ 10002 Definitions.

(a) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor under § 10004(b) of this title.

(b) "Caucus" means members of the House of Representatives or Senate, of the same political party, who assemble to discuss matters of public business.

(c) "FOIA" means the Freedom of Information Act [this chapter].

(d) "FOIA coordinator" shall mean the person designated by the Cabinet Secretary, school district superintendent, local government head, Chair, or equivalent executive officer of the public body to receive and process FOIA requests.

(e) "FOIA request" or "request" means a request to inspect or copy public records pursuant to § 10003 of this title.

(f) "FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for public records may be made.

(g) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by video-conferencing.

(h) "Public body" means, unless specifically excluded, any regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State, including, but not limited to, any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity or body established by an act of the General Assembly of the State, or established by any body established by the General Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity, which:

(1) Is supported in whole or in part by any public funds; or

(2) Expends or disburses any public funds, including grants, gifts or other similar disbursals and distributions; or

(3) Is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations.

"Public body" shall not include any caucus of the House of Representatives or Senate of the State. "Public body" shall include any authority created under Chapter 14 of Title 16.

(i) "Public body," "public record" and "meeting" shall not include activities of the University of Delaware and Delaware State University, except that the Board of Trustees of both universities shall be "public bodies," university documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees of either institution shall be a "meeting." Additionally, any university request for proposal, request for quotation, or other such document soliciting competitive bids for any contract, agreement, capital improvement, capital acquisition or other expenditure proposed to involve any amount or percentage of public funds by or on behalf of the university shall indicate on the request for proposal or other such document that it relates to the expenditure of public funds.

(j) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(k) "Public funds" are those funds derived from the State or any political subdivision of the State.

(*l*) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, 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. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of the person's personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court;

(10) Subject to § 10004(f) of this title with respect to release of minutes of executive sessions, any record of discussions held in executive session pursuant to § 10004(b) and (c) of this title;

(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers;

(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used;

(13) Any records in the possession of the Department of Correction where disclosure is sought by an inmate in the Department's custody;

(14) Investigative files compiled or maintained by the Victims' Compensation Assistance Program;

(15) Any photographs, video recordings or audio recordings of a postmortem examination in the possession of the Division of Forensic Science;

(16) Emails received or sent by members of the Delaware General Assembly or their staff;

(17)a. The following records, which, if copied or inspected, could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual:

1. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures.

2. Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records of mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are used or stored, arenas, stadiums, waste and water systems, electric transmission lines and substations, high-pressure natural gas pipelines and compressor stations, and telecommunications networks facilities and switching equipment, the disclosure of which would reveal the building's or structure's internal layout, specific location, life, safety and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments. Records that disclose the substances being used or stored on a given piece of property are public records; however, records which disclose the specific location on that property of the substances being used or stored may be disclosed only if the chief administrative officer of the agency from which the record is requested determines that disclosure will not jeopardize the security of any structure owned by the State or any of its political subdivisions, or will not facilitate the planning of a terrorist attack, or will not endanger the life or physical safety of an individual.

3. Records of any building or structure operated by the State or any of its political subdivisions, the disclosure of which would reveal the building's or structure's life, safety and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments.

4. Records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained or regulated by the State or any of its political subdivisions.

5. Those portions of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety. The only items that are protected from disclosure by this paragraph are:

A. Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments or to the response or deployment plans; and

B. Records not subject to public disclosure under federal law that are shared by federal or international agencies and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for criminal acts against United States citizens or targets.

6. Nothing in this subsection shall be deemed to prohibit the disclosure of information necessary to comply with the requirements of Chapter 8 of Title 26, the Underground Utility Damage Prevention and Safety Act.

7. Information technology (IT) infrastructure details, source code, logical and physical design of IT systems and interfaces, detailed hardware and software inventories, network architecture and schematics, vulnerability reports, and any other information that, if disclosed, could jeopardize the security or integrity of an information and technology system owned, operated or maintained by the State or any public body subject to the requirements of this chapter.

b. Nothing in this paragraph shall interfere with the right of any committee of the General Assembly to hear information in the committee at the request of the committee chair or, if appropriate, to hear information in an executive session of the committee, or to subpoena information pursuant to § 705 of this title;

(18)a. Any military service discharge document or documents, a discharge, separation notice, certificate of service, report of transfer or discharge, or any other notice or document which is evidence of severance or transfer from military service and which contains a service record from the armed forces of the United States, or any document that purports to represent a notice of separation from or service in any armed forces of the United States including but not limited to the United States Department of Defense, DD Form 214, of a veteran of the armed forces of the United States, which has been heretofore recorded at a county recorder of deeds. Such document or documents may only be disclosed in accordance with the provisions of paragraph (l)(17)b. of this section.

b. *Access to authorized persons.* — The following persons are permitted to view or reproduce recorded military service discharge documents:

1. The veteran subject of the discharge;

2. The spouse or child of a veteran, with consent of the veteran;

3. If the veteran is deceased, a survivor or heir of the veteran who may be eligible to claim any type of benefit by virtue of the veteran's service in the military;

4. A person with a signed and notarized authorization from the veteran;

5. A county, state or federal officer assisting the veteran or veteran's family with a veteran's benefit application;

6. Anyone authorized by an order from a Delaware court, to view or copy the document; or

7. Government agencies, including courts, that have an interest in assisting the veteran subject to the military service discharge record or in assisting the beneficiaries of the deceased veteran subject to the military service discharge record in obtaining a benefit.

c. Any document referenced in paragraph (l)(18)a. of this section shall be deemed a public record upon the passage of 70 years from the date of the subject veteran's separation or discharge from service; or

(19) Any communications between a member of the General Assembly and that General Assembly member's constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's constituent, or communications between members of the General Assembly.

(m) "Requesting party" shall mean the person filing the FOIA request.

(n) "Video-conferencing" means any system permitting interaction among all participants in 2 or more noticed public locations in compliance with § 10006 of this title.

(60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1; 63 Del. Laws, c. 424, § 1; 64 Del. Laws, c. 113, § 1; 65 Del. Laws, c. 191, §§ 2-6; 66 Del. Laws, c. 143, § 1; 67 Del. Laws, c. 281, § 194; 69 Del. Laws, c. 67, § 2; 69 Del. Laws, c. 250, § 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 260, §§ 1, 2, 3; 73 Del. Laws, c. 354, § 1; 75 Del. Laws, c. 235, §§ 3-5; 77 Del. Laws, c. 38, §§ 1-5, 8; 77 Del. Laws, c. 211, §§ 1, 2; 78 Del. Laws, c. 12, § 1; 78 Del. Laws, c. 382, § 1; 79 Del. Laws, c. 265, § 19; 79 Del. Laws, c. 272, § 1; 79 Del. Laws, c. 307, § 1; 79 Del. Laws, c. 334, § 1; 80 Del. Laws, c. 296, § 1.)

§ 10003 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 appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.

(b) All state agencies and public bodies shall implement and promulgate a policy for addressing requests made under the Freedom of Information Act.

(c) All state agencies and public bodies shall develop a web portal for receiving FOIA requests through the internet. Such portals shall utilize the standard request form promulgated by the Attorney General.

(d)(1) All state agencies and public bodies are 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.

(2) All public bodies in the executive branch of state government that are subject to the provisions of this chapter and are required by statute, regulation, or other established policy to publish an annual or biennial report, shall electronically post copies of these reports to a single designated State website approved by the Secretary of State. Electronic notification of the availability of these reports on the designated State website shall fulfill a public body's duty to publish and provide these reports to the Governor, General Assembly, or other state agencies or state officials.

(e) All state agencies and public bodies shall provide a mailing address for receiving FOIA requests through the U.S. mail.

(f) *Form of request.* —

(1) All FOIA requests shall be made in writing to the public body in person, by U.S. mail, by e-mail, by fax, or online in accordance with the provisions hereunder. FOIA requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General provided, 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 any state agency, school district, or other public body.

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

(g) *FOIA coordinator.* —

(1) Each public body shall designate a FOIA coordinator who shall serve as the point of contact for FOIA requests and coordinate the public body's responses thereto. The FOIA coordinator shall be identified on the public body's website and each public body shall provide the name and contact information for its FOIA coordinator to the Attorney General. The public body shall update this information on its website and with the Attorney General within 20 working days of any change in its FOIA coordinator or the FOIA coordinator's contact information. 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 public body in locating and providing the requested records. The FOIA coordinator and/or his or her designee will also work to foster cooperation between the public body 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 public body received the request, the public body's response deadline, the date of the public body'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 public body, 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.

(h) *Response to requests.* —

(1) The public body 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 public body shall cite 1 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 public body denies a request in whole or in part, the public body's response shall indicate the reasons for the denial. The public body shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

(i) *Requests for e-mail.* —

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

(2) Before requesting the information and technology personnel or custodians to provide e-mail records, the public body 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.

(j) *Requests for other noncustodial records.* —

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

(2) Before requesting any noncustodial records, the public body 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.

(k) *Review by public body.* — Prior to disclosure, records may be reviewed by the public body to ensure that those records or portions of records deemed nonpublic may be removed pursuant to § 10002 of this title or any other applicable provision of law. In reviewing the records, all documents shall be considered public records unless subject to 1 of the exceptions set forth in § 10002 of this title or any other applicable provision of law.

(*l*) *Hours of review.* — The public body shall provide reasonable access for reviewing public records during regular business hours.

(m) *Fees.* — Unless otherwise set forth in the Delaware Code or any applicable code of a county or municipal public body, the following fees 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. 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 public body's legal review of whether any portion of the requested records is exempt from FOIA. The public body 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 public body 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 public body 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 public body may in its discretion aggregate staff time for all such requests when computing fees hereunder. Notwithstanding the foregoing, any Freedom of Information Act policy adopted by a public body pursuant to subsection (b) of this section hereunder may include provisions for the waiver of some or all of the above administrative fees; provided that such waiver shall apply equally to a particular class of persons (i.e., nonprofit organizations).

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

(60 Del. Laws, c. 641, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 10, § 1; 78 Del. Laws, c. 202, § 1; 78 Del. Laws, c. 382, § 1; 79 Del. Laws, c. 272, § 1; 79 Del. Laws, c. 273, § 1; 79 Del. Laws, c. 274, § 1.)

§ 10004 Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (h) of this section.

(b) A public body may call for an executive session closed to the public pursuant to subsections (c) and (e) of this section, but only for the following purposes:

(1) Discussion of an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open. This provision shall not apply to the discussion by a licensing board or commission which is subject to the provisions of § 8735 of this title, of an individual citizen's qualifications to pursue any profession or occupation for which a license must be issued by the public body in accordance with Delaware law;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements, or sales or leases of real property;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed, unless the employee or student requests that such a meeting be open.

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The vote on the question of holding an executive session shall take place at a meeting of the public body which shall be open to the public, and the results of the vote shall be made public and shall be recorded in the minutes. The purpose of such executive sessions shall be set forth in the agenda and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must take place at a public meeting and the results of the vote made public.

(d) This section shall not prohibit the removal of any person from a public meeting who is wilfully and seriously disruptive of the conduct of such meeting.

(e)(1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings, including whether such meeting will be conducted by video-conferencing; however, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

(3) All public bodies shall give public notice of the type set forth in paragraph (e)(2) of this section of any special or rescheduled meeting as soon as reasonably possible, but in any event no later than 24 hours before such meeting. A special or rescheduled meeting shall be defined as one to be held less than 7 days after the scheduling decision is made. The public notice of a special or rescheduled meeting shall include an explanation as to why the notice required by paragraph (e)(2) of this section could not be given.

(4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available. In addition, for all noncounty and nonmunicipal public bodies, public notice required by this subsection shall include, but not be limited to, electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public. In addition, all public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post said notice to the designated State of Delaware website approved by the Secretary of State.

(5) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting, and the reasons for the delay in posting shall be briefly set forth on the agenda.

(f) Each public body shall maintain minutes of all meetings, including executive sessions, conducted pursuant to this section, and shall make such minutes available for public inspection and copying as a public record. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer. All public bodies in the executive branch of state government that are subject to the provisions of this chapter and meet 4 or fewer times per year shall electronically post draft minutes of open public meetings, identified as "draft minutes," to the designated State website approved by the Secretary of State within 20 working days after the conclusion of the meeting. Prior to being posted, draft minutes may be distributed to members of the public body who were present at the open public meeting. Draft minutes may continue to be revised and corrected up until final minutes are approved by the public body at an open meeting. All public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post final approved minutes of open public meetings to the designated State of Delaware website approved by the Secretary of State within 5 working days of final approval of said minutes.

(g) Every regularly scheduled meeting of a public body shall be held within the geographic jurisdiction of that public body. All such other meetings shall be held as follows:

(1) A public body serving any political subdivision of the State, including, but not limited to, any city, town or school district, shall hold all such other meetings within its jurisdiction or the county in which its principal office is located, unless it is school board training that has been approved by the Secretary of Education as beneficial to school board development activities.

(2) For the purposes of this subsection, a "regularly scheduled meeting" shall mean any meeting of a public body held on a periodic basis.

(3) The provisions of this subsection, insofar as they are not practicable, shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to a meeting held by a public body outside of its jurisdiction which is necessary for the immediate preservation of the public financial welfare.

(h) This section shall not apply to the proceedings of:

(1) Grand juries;

(2) Petit juries;

(3) Special juries;

(4) The deliberations of any court;

(5) The Board of Pardons and Parole;

(6) Public bodies having only 1 member;

(7) Public bodies within the legislative branch of the state government other than the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Legislative Oversight and Sunset Committee, Legislative Council, committees, excluding ethics committees, specifically enumerated and created by Resolution of the House of Representatives or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives or Senate;

(8)a. The Victims' Compensation Assistance Program Appeals Board may close any meeting to the public where:

1. The claim to be considered derives from any sexual offense within the definitions of a crime in § 9002 of Title 11.

2. The claim to be considered derives from any offense by or against a child, as defined in this section, unless such child has been deemed amenable to the jurisdiction of a criminal court as to the matter before the Board.

3. The claim to be considered derives from any matter not yet adjudicated.

4. The claim to be considered involves a "victim" who is a "child" as those terms are defined in Chapter 90 of Title 11.

b. The Board shall produce a complete record of any proceedings closed to the public which record may be denied to anyone seeking access for good cause shown; and

(9) The deliberations of the following agencies for any case decision governed by the Administrative Procedures Act in Chapter 101 of this title:

a. State Human Relations Commission;

b. Industrial Accident Board;

c. Tax Appeals Board; and

d. Victims' Compensation Assistance Program Appeals Board.

(i) In an enforcement action pursuant to § 10005 of this title, a citizen or the Attorney General, as the case may be, may seek the forfeiture of all or part of the compensation of members of a board, commission or other public body for any closed meeting which such board, commission or other public body closed knowing that such action violated this chapter. Such forfeiture may only be ordered by the Court if the Court makes a specific finding that the board, commission or public body had no good faith basis to believe that the meeting could be closed. It shall be an absolute defense that an individual never voted in favor of the closed meeting. If the board, commission or public body also met validity for other purposes on the same day as the meeting which violated the act, such valid action shall be considered by the Court in determining the extent of any forfeiture award.

(60 Del. Laws, c. 641, § 1; 63 Del. Laws, c. 269, § 1; 65 Del. Laws, c. 191, §§ 7-12; 66 Del. Laws, c. 419, § 1; 67 Del. Laws, c. 367, §§ 1, 2; 71 Del. Laws, c. 38, § 1; 71 Del. Laws, c. 117, § 1; 71 Del. Laws, c. 191, § 1; 71 Del. Laws, c. 193, § 1; 72 Del. Laws, c. 459, § 1; 72 Del. Laws, c. 460, § 18; 75 Del. Laws, c. 178, §§ 1, 2; 77 Del. Laws, c. 38, §§ 6, 7; 77 Del. Laws, c. 211, § 3; 78 Del. Laws, c. 288, § 5; 79 Del. Laws, c. 125, § 4; 79 Del. Laws, c. 271, § 1; 79 Del. Laws, c. 393, § 1; 80 Del. Laws, c. 260, § 5.)

§ 10005 Enforcement.

(a) Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 60 days of the citizen's learning of such action but in no event later than 6 months after the date of the action.

(b) Any citizen denied access to public records as provided in this chapter may bring suit within 60 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Notwithstanding the foregoing, a person denied access to public records by an administrative office or officer, a department head, commission, or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in subsection (e) of this section. Thereafter, the petitioner or public body the Attorney General is otherwise obligated to represent may appeal an adverse decision on the record to the Superior Court within 60 days of the Attorney General's decision.

(c) In any action brought under this section, the burden of proof shall be on the custodian of records to justify the denial of access to records, and shall be on the public body to justify a decision to meet in executive session or any failure to comply with this chapter.

(d) Remedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief. The court may award attorney fees and costs to a successful plaintiff of any action brought under this section. The court may award attorney fees and costs to a successful defendant, but only if the court finds that the action was frivolous or was brought solely for the purpose of harassment.

(e) Any citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur. The petition shall set forth briefly the nature of the alleged violation. Upon receiving a petition, the Attorney General shall promptly determine whether the petition is against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title. Every petition against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title shall be referred to the Chief Deputy Attorney General who shall, within 20 days of receiving the petition, render a written determination to the petitioner and the public body involved declaring whether a violation has occurred or is about to occur. If the Chief Deputy finds that a violation of this chapter has occurred or is about to occur, the Attorney General shall not represent the public body in any appeal filed pursuant to this chapter for such violation if the public body the Attorney General is otherwise obligated to represent fails to comply with the Chief Deputy's determination. Regardless of the finding of the Chief Deputy, the petitioner or the public body may appeal the matter on the record to Superior Court. In every other case, the Attorney General shall, within 10 days, notify in writing the custodian of records or public body involved. Within 20 days of receiving the petition, the Attorney General shall make a written determination of whether a violation has occurred or is about to occur, and shall provide the citizen and any custodian of records or public body involved with a copy of the determination. If the Attorney General finds that a violation of this chapter has occurred or is about occur, the citizen may: (1) File suit as set forth in this chapter; or (2) request in writing that the Attorney General file suit on the citizen's behalf. If such request is made, the Attorney General may file suit, and shall within 15 days notify the citizen of the decision to file suit, unless the custodian of records or public body has agreed to comply with this chapter. The citizen shall have the absolute right to file suit regardless of the determination of the Attorney General, and may move to intervene as a party in any suit filed by the Attorney General.

(f) An administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obligated to represent pursuant to § 2504 of this title shall not require the approval of the Attorney General pursuant to § 2507 of this title to address claims of violation under this chapter.

(60 Del. Laws, c. 641, § 1; 65 Del. Laws, c. 191, § 13; 66 Del. Laws, c. 354, §§ 1, 2; 77 Del. Laws, c. 400, §§ 1-3.)

§ 10006 Video-conferencing participation in open meetings.

Unless otherwise prohibited by law, any public body subject to the provisions of this chapter, except for any public body in which members are elected by the public to serve on the public body, may conduct a meeting by means of video-conferencing, provided each attending member's participation occurs at a noticed public location where members of the public may also attend the meeting. The participation of a member of such public body by video-conferencing in compliance with this section shall be deemed attendance for all purposes, including purposes of establishing a quorum. When video conferencing is used, at least 1 of the noticed public locations shall be within the geographic jurisdiction of that public body. Meetings may otherwise be noticed for multiple public locations within the state where video-conferencing is available. During meetings where video-conferencing is used, each member must be identified, all participants shall be able to communicate with each other at the same time, and members of the public attending at the noticed public location or locations of the meeting must be able to hear and view the communication among all members of the public body participating by video-conference. Video-conferencing participation is not permitted when a verbatim transcript of the meeting may be required by law, except for public hearings on proposed rules and regulations, or where the chair or presiding officer determines that physical attendance is required at a single location.

(77 Del. Laws, c. 211, § 4.)

§ 10007 Education.

(a) The Attorney General shall publish biennially a manual for FOIA coordinators. The Attorney General shall send the manual to each FOIA coordinator electronically and shall make the manual available on the Attorney General's website. The Attorney General shall, at a minimum, include the following in the manual:

(1) An explanation of the duties and responsibilities of the FOIA coordinator;

(2) An explanation of the time frames included within this chapter, how to calculate these time frames, and the circumstances in which any of these time frames are tolled;

(3) An explanation of the power of the public body to charge fees for requests for public records;

(4) An explanation of the reasons for calling an executive session closed to the public pursuant to purposes listed in § 10004(b) of this title, including an explanation of the strategy session exception; and

(5) A summary of Delaware judicial opinions, Attorney General opinions, and other legal opinions issued in the preceding 2 years related to this chapter.

(b) The Attorney General shall hold annually a training seminar for FOIA coordinators that shall be open to the public and noticed in accordance with this chapter. The Attorney General shall send notice of the training to each FOIA coordinator and shall post notice of the training on the Attorney General's website. The Attorney General shall, at a minimum, include the following in the training:

(1) The topics included in the manual pursuant to subsection (a) of this section;

(2) A discussion of best practices for responding to requests for public records; and

(3) A question and answer session.

(c) The Attorney General shall, in addition to any other publication method deemed appropriate by the Attorney General, maintain a website containing Attorney General opinions related to this chapter. The Attorney General shall include on the website a summary of the holding of each Attorney General opinion.

(d) Nothing in this section shall be construed as legal advice in contravention of § 2504(2) or § 2515 of this title.

(79 Del. Laws, c. 272, § 1.)