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YOUR RIGHTS UNDER THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (commonly known as “FOIA” is a hallmark of a democratic society. As President Abraham Lincoln stated in his Gettysburg Address, government should be “of the people, by the people, and for the people.” FOIA gives Delaware citizens the right to attend most meetings of city and town councils, county government, school boards, and other public bodies. FOIA also gives citizens the right to inspect and copy most public records. If you think that you have been denied access to a public meeting or public records, your complaint may be investigated by the Attorney General.

Does the open meeting law apply to all branches of the government?

No. FOIA does not apply to the General Assembly or to the courts, which have their own rules for who can attend what proceedings.

Can I attend any government meeting?

As a general rule, all meetings of public bodies must be open to the public. This means that the public body must post notice of the date, time, and place of the meeting at least seven days in advance, unless there is an emergency. Notice must be conspicuously posted where the public body regularly meets. The notice must also include an agenda listing the principal items of public business to be discussed.

Can meetings be closed to the public?

Yes, in some circumstances. FOIA permits a public body to meet in executive session, out of public view, to discuss personnel and other confidential matters. FOIA also permits a public body to meet in executive session for legal advice from an attorney.

Do I have a right to speak at a public meeting?

Not under FOIA. Each agency has its own rules and procedures for public meetings and most do allow time for public comment. The Attorney General encourages public bodies to allow citizen participation.

How can I look at public records?

A public body can require you to make a request to inspect public records in writing. As a general rule, the public

body should respond to your request within ten days. If the request is granted, you can inspect the public records where they are regularly stored (for example, the town hall) during regular business hours.

Will this cost anything?

FOIA permits a public body to charge a reasonable fee for the cost of copying a public record, usually 25 or 50 cents per page. If there are a large number of records, the public body may, by rule or regulation, also charge for the time and expense of retrieving the records.

Can any records be withheld?

Yes. FOIA and other state and federal laws prohibit disclosure of certain information, for example: personnel or student records; tax returns of other citizens; social security numbers; health and welfare records; Family Services records; criminal history records; investigative files; prisoner records. The Driver's Privacy Protection Act also limits your access to personal information about other Delaware drivers.

Do I have a right of access to judicial records?

Not under FOIA. FOIA does not apply to the courts. But you may have a common law right of access to judicial records, subject to court rules. Most records of the Family Court are not open to public view unless you are a party to the proceeding.

What can I do if I am denied access to a public meeting or a public record?

Under FOIA, you can file a written complaint with the Attorney General. The Civil Division will investigate, and make a written determination whether a public body has violated FOIA, usually within 30 days.

Will the Attorney General investigate a State Agency?

No. The Attorney General will not investigate a complaint against a state agency because FOIA does not allow the Attorney General to investigate agencies which it represents. You have a right under FOIA to sue in court if you think your rights of access have been denied. As a general rule, you must file suit within 60 days of the violation. If you win your lawsuit, the court can award you costs and expenses, including attorney's fees.