

The Delaware River and Bay Authority (the “Authority”) Freedom of Information Regulations were first adopted by the Authority Commissioners in 1990, with subsequent amendments made in 2000, 2004 and 2015. The Regulations set forth as follows constitute the current version.

FREEDOM OF INFORMATION REGULATIONS

OF

THE DELAWARE RIVER AND BAY AUTHORITY

Introduction

The Freedom of Information Act (“FOIA”), which can be found in Title 5 of the United States Code, section 552, was enacted in 1966 and provides that any person has the right to request access to federal agency records or information. Delaware and New Jersey each have similar legislation which is found at 29 Del. C. §§ 10001 *et seq.* and N.J.S.A. 47:1A-1 *et seq.*

The purpose of the Authority’s Freedom of Information Regulations is to set forth a policy concerning public records, records of a confidential nature, outline the process for responding to requests from the public for Public Records, and how the Authority conducts and notices meetings.

The latest version of this policy can be viewed in the press room of the Authority’s website, www.drba.net.

All Public Records requested under the Authority’s FOIR 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 Authority and comply with the policy that the public shall have reasonable access to Public Records.

Section 1. Declaration of Policy.

- a) It shall be the policy of the Authority that the Authority’s public business be performed in an open, public, and transparent manner so that the citizens of Delaware and New Jersey shall have the opportunity to observe the performance of the Authority and to monitor the decisions that are made by the Authority in formulating and executing the Authority’s policies. It shall further be the policy of the Authority to provide the public with reasonable access to Public Records, which will be made available at the offices of the Authority upon request.
- b) It shall also be the policy of the Authority that Public Business and Public Records, which are of a confidential nature, as provided for by these regulations, shall be kept confidential until such time as the reason for the confidentiality no longer exists, after which the business and records shall be made available to the citizens of Delaware and New Jersey.

Section 2. Definitions.

For purposes of these regulations, the following terms shall have the meanings specified in this Section 2.

- (a) "Authority" means the Delaware River and Bay Authority
- (b) "Commissioners" means the Commissioners of the Authority.
- (c) "FOIR request" or "request" means a request to inspect or copy Public Records pursuant to these regulations.
- (d) "FOIR Request Form" means the form promulgated by the Authority upon which requests for Public Records may be made.
- (e) "Meeting" means the formal or informal gathering (whether corporeal or by means of communication equipment) of a quorum of the Commissioners for the purpose of discussing or taking action on Public Business.
- (f) "Non-Custodial Records" means records controlled by the Authority but that are either not within its possession or cannot otherwise be provided by the Authority with reasonable effort from records it possesses.
- (g) "Public Business" means and includes all matters which relate in any way, directly or indirectly, to the performance of the Authority's functions or the conduct of its business
- (h) "Public Information Officer" means the Authority's Public Information Officer, who has been designated to receive and process FOIR requests.
- (i) "Public Record" is information of any kind, owned, made, used, retained, received, produced, composed or otherwise compiled or collected, by the Authority, 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 these regulations, the following records -are confidential and shall not be deemed "Public Records":
 - (1) records which are specifically exempted from disclosure by State or Federal statute and any records which, under similar circumstances, would be specifically exempted from public disclosure by statute or common law of either state if they were the records of a state agency, department or authority of such State;
 - (2) records which if disclosed, would constitute an unwarranted invasion of personal privacy, including but not limited to any personnel or medical file, background investigations, physical and/or psychiatric examinations, alcohol and/or drug test results obtained in connection with an application for or during employment, resumes of unsuccessful applicants, job performance reviews and matters relating to the competency, grievances, disciplining or termination of any of the Authority's employees unless the individual employee whose rights could be adversely affected requests in writing that these

matters be made public;

- (3) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature or records which are trade secrets or are maintained for the regulation or supervision of a commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise;
- (4) With the exception of documents required under discovery rules, investigatory files compiled for civil or criminal law-enforcement purposes, including pending investigative files;
- (5) Criminal files and criminal records except that after the filing of charges, a defendant, upon proof of identity, may obtain a copy of records pertinent to such charges. The Authority may delete any information, before release, which would disclose the identity and contact information of victims, witnesses, intelligence personnel and aides or any other information of a privileged and confidential nature;
- (6) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local state or national welfare and security;
- (7) With the exception of any fully-executed collective bargaining agreements, any records involving labor negotiations or collective bargaining;
- (8) Any records pertaining to pending or potential litigation which are not records of any court and any records falling within the attorney work-product or attorney-client privilege;
- (9) Information which is to be kept confidential pursuant to a court order;
- (10) Subject to subsection (g) of Section 4 of these regulations, minutes of executive sessions and records of discussions held in an executive session pursuant to subsection (b) of Section 4 of these regulations;
- (11) Any records concerning negotiations with respect to the lease or acquisition (or the financing of any lease or acquisition) of real or personal property by the Authority;
- (12) Any matter relating to pending or anticipated contract needs, specifications and/or negotiations to which the Authority is a party or that may impact on the Authority or its ability to negotiate, including, without limitation, any and all records and/or information received pursuant to the public solicitation of bids and/or proposals while the official award, rejection or other disposition of such matter is still pending by the Authority and any information that if disclosed would

give an advantage to competitors or bidders or if disclosed would jeopardize the competitive nature of public bidding;

- (13) Records which if disclosed, would endanger the life or safety of any person;
- (14) Records which are inter-agency or intra-agency advisory, consultative or deliberative materials other than statistical or factual tabulations of data, provided that instructions to staff that affect the public or final agency policy or other determinations are not exempted;
- (15) Administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize the Authority's computer security;
- (16) Any record concerning response procedures or plans prepared to prevent or respond to emergency situations or to prevent, mitigate or respond to criminal acts, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security plans; and
- (17) Any record pertaining to any Authority building or facility, including, including but not limited to security and surveillance measures, building plans, blueprints, schematic drawings, diagrams, and operational manuals, which would reveal the facility's internal layout, support systems, structure elements, surveillance techniques, operational and evacuation plans or protocols, or personnel deployment.

(j) "Requesting Party" means the person filing the FOIR request.

(k) "State" means the State of Delaware and/or the State of New Jersey, as applicable.

Section 3. Records Request, Response Procedures and Access to Public Records.

(a) Form of Request.

All FOIR Requests shall be made in writing, by email, by fax, or online in accordance with the provisions hereunder. FOIR Requests may be submitted using the FOIR Request Form attached and, for consistency, it is encouraged and recommended that the official form be utilized; however, any FOIR Request conforming with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIR Request Form may be obtained from the Authority's website.

All requests shall adequately describe the records sought in sufficient detail to enable the Authority to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Authority in locating the requested records, the Authority may ask the Requesting Party to 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. Blanket requests for information or requests that require significant research or the creation of a record shall not be honored. A request for information is not the same as a request for a specific public record.

(b) Method of Filing Request.

FOIR Requests may be made by mail or in person to the Public Information Officer at Delaware River and Bay Authority, Post Office Box 71, New Castle, DE 19720; by email to contact_us@drba.net, by fax at 302-571-6391; or via online request form, which may be found on the website at www.drba.net.

(c) FOIR Coordinator.

The Public Information Officer shall serve as the point of contact for FOIR Requests and coordinate the Authority's responses. The Public Information Officer shall be identified on the website. The Public Information Officer may designate other-Authority employees to perform specific duties and functions hereunder.

The Public Information Officer and/or his or her designee, working in cooperation with other Authority employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist in locating and providing the requested records. The Public Information Officer and/or his or her designee will also work to foster cooperation between the Authority and the Requesting Party.

The Public Information Officer shall maintain a file tracking all FOIR Requests for the then-current calendar year. For each FOIR Request, the file shall include: (1) copy of original letter or document requesting information with the Requesting Party's contact information; (2) the date the Authority received the Request; (3) copy of the Authority's initial response, (if requesting an extension or additional information); (4) the names, contact information and dates of correspondence with individuals contacted in connection with requests; (5) the dates of review by the -Authority and the names of individuals who conducted such reviews; (6) copy of invoice -if copying and/or administrative fees were assessed; and (7) final disposition of the Request (copy of letter). With minor exceptions, the tracking system, including the names of the requestors shall also be subject to disclosure.

(d) Authority Response to Requests.

The Authority shall respond to a FOIR Request as soon as possible, but in any event within twenty (20) 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 twenty (20) business days, the Authority 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.

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

(e) Requests for Email.

The Public Information Officer shall request the assistance of the Authority's Management Information Services (MIS) with requests for email records. Upon compilation of email records from MIS, the Authority may review the email records to ensure that those records or portions of records deemed non-public are removed pursuant to the Authority's FOIR Section 2, subsection (i) or any other applicable provision of law. Before requesting MIS to provide email records, the Public Information Officer shall provide a cost estimate from MIS to the Requesting Party, listing all charges expected to be incurred by MIS in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

(f) Requests for Other Non-Custodial Records.

If all or any portion of a FOIR Request seeks Non-Custodial Records, then the Authority shall promptly notify the requestor of the public agency that controls the documents, if known, so that the requestor may make a direct request to that public agency.

(g) Hours of Review.

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

(h) Review by Authority.

Prior to disclosure, records may be reviewed by the Authority to ensure that those records or portions of records deemed non-public may be removed pursuant to the Authority's regulations 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 the above mentioned regulations or any other applicable provision of law. Nothing herein shall prohibit the Authority from disclosing or permitting access to Public Records if the Authority determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

(i) Photocopying Fees.

- 1) Copies: The first 10 pages of copied material shall be provided free of charge. The charge for copying Public Records for copies over and above 10 shall be \$0.05 per sheet.

(j) Administrative Fees.

Administrative fees may- 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 FOIR 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 Authority's legal review of whether any portion of the requested records is exempt from FOIR. The Authority shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIR Requests. In connection therewith, the Authority shall minimize the use of non-administrative personnel in processing FOIR Requests, to the extent possible.

Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Authority 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.

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, including copying fees.

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

(k) 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. To make a proper request for electronic data, the requestor must include information regarding the name of the sender or recipient, the subject of the communication and a date or date range.

(l) Payment.

Prior to the fulfillment of any request for records or any service being performed associated with such request, the Authority may require the pre-payment of all applicable fees or at minimum a fifty percent (50%) deposit.

(m) 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 Authority in preparing the requested records. The Authority shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

Section 4. Authority Commission Meetings

a) Public Meeting.

Every Meeting at which a quorum of the Commissioners are present and which Public Business is considered by the Authority shall be open to the public except those closed pursuant to subsections (b) and (c) of this Section. Meetings of subcommittees or ad hoc committees formed by the Commissioners shall not be subject to these requirements. Meetings between the Chair and Vice Chair of either the Commission or any Committee and Authority staff members for purposes of setting an agenda shall not be subject to these requirements. The meetings are not intended to be public hearings, but the procedures that are followed allow the Commissioners to communicate with each other and, where appropriate, receive input from the public. During the formal parts of the meetings, the discussions will be conducted among members of the Commissioners, the Executive Director, and appropriate staff of the Authority. The Chairs of the Commissioners' Committees will be called on to introduce and move the appropriate resolutions in their respective areas. Once a resolution is introduced and moved, it will be the responsibility of the Chairperson and members of the appropriate committee, as well as staff, to explain the recommendations. Individuals wishing to address the Commissioners will be provided an opportunity to do so during the meeting. Individuals addressing the Commissioners will be limited to a set number of minutes to make their presentation. Individuals will be granted five minutes per topic. However, individuals with more than one topic to present will be limited to a total of ten minutes. In instances where several individuals wish to address the Commissioners on the same topic, the total amount of time that will be allotted to presentations on the particular topic will be ten minutes. Exceptions to this policy may be granted by the Chairperson.

b) Executive Sessions.

Every meeting of the Authority at which Public Business is to be considered may be preceded by an executive session closed to the public at which Public Business of a confidential nature is to be discussed. At any time during an advertised meeting, the Authority may adjourn to a closed session for legitimate purpose and then return to an open session to conclude the public business. Additionally, executive sessions, closed to the public, at which Public Business of a confidential nature is to be discussed, may be held with the approval of a majority of the Commissioners of each state upon the giving of notice discussed in Section 4(f) herein. Public Business of a confidential nature shall consist of:

- (1) Any matter made confidential by federal law, by state statute or by court rule, order or decision.
- (2) Any matter concerning personnel, including appointment, the terms and conditions of employment, and individual's qualifications to hold a job or pursue training, matters in which the names, competency and abilities of individual employees as well as the disciplining or termination of any of the

Authority's employees unless, with respect to such disciplining or termination, all the individual employees or appointees whose rights could be adversely affected request in writing that such hearing be held in public. Any matter concerning collective bargaining with the Authority's employees.

- (3) Preliminary discussions on site acquisitions for capital improvements.
- (4) Any techniques used in protecting the safety and property of the public when their disclosure would impair such protection. Discussion of 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 plans. Any matter concerning investigation of violations or possible violations of the law.
- (5) Activities of the Authority police in efforts to collect information leading to criminal apprehension.
- (6) Any matter concerning pending or anticipated litigation involving the Authority, any matters falling within the attorney-client privilege to the extent that confidentiality is required for the attorney to exercise his ethical duties as a lawyer and any matter where the Authority has requested an attorney-at-law to render legal advice or an opinion concerning an issue or matter under discussion by the Authority and the Authority has not yet taken a public stand or reached a conclusion in the matter.
- (7) Discussion of the content of documents deemed Public Records of a confidential nature in Section 2(i) of these regulations where such a discussion may disclose the contents of such documents.
- (8) Discussion of potential or actual emergencies related to the preservation of the public peace, health and safety, provided that their disclosure could impair such preservation.
- (9) Any matter concerning the lease or acquisition of real property by the Authority.
- (10) Any matter concerning pending or anticipated contract negotiations to which the Authority is a party, including, without limitation, any negotiations preliminary to the issuance of Authority bonds or any matter which would involve the disclosure of trade secrets.
- (11) Any matter concerning long range planning alternatives including, but not limited to, alternative means available to finance Authority activities.

c) Emergency Meetings.

Except as provided in this subsection, the Authority shall not hold a meeting unless adequate notice thereof has been provided to the public. Upon the affirmative vote of a majority of the

members present, the Authority may hold a meeting notwithstanding failure to provide adequate notice if (1) such meeting is required in order to deal with matters of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the Authority or threaten the public peace, health and safety, (2) the meeting is limited to discussion of and acting with respect to such matters of urgency and importance for which the meeting was called, (3) notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same at the principal office of the Authority, by posting notice of the meeting on the Authority's website, and by notifying the newspapers described in subsection (f)(3) below by telephone, facsimile or email or by delivering a written notice of same to such newspapers, and (4) either (i) the Authority could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided or (ii) although the Authority could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.

d) Special and Rescheduled Meetings.

Special meetings or rescheduled meetings of the Authority may be called by the Chairperson and/or Vice Chairperson of the Authority for any purpose or purposes prescribed in the notice of the meeting. A special meeting or rescheduled meeting shall be defined as one to be held less than seven (7) days after the scheduling decision is made. Notice of any special or rescheduled meeting shall be made as set forth in subsection (f)(4) below and shall include an explanation as to why the notice provisions for a regular meeting, as described in subsection (f)(2) of this subsection could not be given. Business transacted at any special meeting or rescheduled meeting shall be confined to the purpose or purposes stated in the notice of meeting.

e) Removal of Disorderly Persons from Meetings.

These regulations shall not prohibit the removal of any person from a public meeting who has willfully and seriously disrupted the conduct of such meeting.

f) Notice of Meetings.

- (1) This subsection concerning the notice of meetings shall not apply to any emergency meeting held pursuant to subsection (c) above.
- (2) The Authority shall give public notice of its regular public meetings, as well as public notice of its known intent to hold executive sessions closed to the public at least seven (7) days in advance thereof. The notice shall include the date, time and place of the meeting. With respect to a public meeting, it shall also include a general statement of the matters to be discussed to the extent known at the time. Except in an annual notice for meetings, with respect to an executive session, it shall include a listing of the category or categories of public business of a confidential nature contained in Section 4(b) which may be discussed in executive session.
- (3) Public notice required by paragraph (2) of this subsection shall be provided by

conspicuous posting of said notice at the principal offices of the Authority in New Castle and Lewes, Delaware and Cape May, New Jersey at least seven (7) days prior to the meeting and by posting notice of the meeting on the Authority's website. Additionally, notice of the meeting shall be delivered to a newspaper of general circulation in the State of Delaware and to at least two newspapers whose combined general circulation includes the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, at least three days prior to the meeting. Copies of this notice shall be made available upon request to citizens of Delaware and New Jersey.

- (4) The Authority shall give public notice of any special meeting or rescheduled meeting by conspicuous posting of said notice at the principal offices of the Authority in New Castle and Lewes, Delaware and Cape May, New Jersey and by posting notice of the meeting on the Authority's website, as soon as reasonably possible, but in any event no later than forty-eight (48) hours before such meeting. The notice shall include the date, time and place of the meeting. With respect to a public meeting, it shall also include a general statement of the matters to be discussed to the extent known at the time. With respect to an executive session, it shall include a listing of the category or categories of public business of a confidential nature contained in Section 4(b) which may be discussed in executive session. The public notice of a special or rescheduled meeting shall also include an explanation as to why the notice required by paragraph (2) of this subsection could not be given. Notice of a special or rescheduled meeting shall also be provided by notifying the newspapers described in subsection (f) (3) above by telephone, facsimile or email or by delivering a written notice of same to such newspapers as soon as possible. Copies of this notice shall be made available upon request to citizens of Delaware and New Jersey.

g) Minutes.

The Authority shall maintain minutes of all meetings, including executive sessions, conducted pursuant to this Section, and shall make such minutes of public meetings available for public inspection and copying as a Public Record. Such minutes shall include a record of those Commissioners present and a record, by individual Commissioner of each vote taken and action agreed upon. Minutes of executive sessions, or portions thereof, and any 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, and such a determination shall be made in an executive session. Following the expiration of the veto period, meeting minutes and resolutions (except minutes of executive sessions for so long as such minutes may be kept confidential pursuant to this Section 4) will be posted on the Authority's website.

h) Location of Meetings.

Every regularly scheduled meeting of the Authority shall be held either in the State of Delaware or in the State of New Jersey.

i) Failure to Invite Commissioners To Circumvent These Regulations.

The Authority shall not fail to invite a portion of Commissioners to a meeting for the purpose of circumventing the provisions of these regulations.

j) Enforcement.

Any person challenging the Authority's compliance with these regulations shall seek review of the Authority's action in accordance with Article XV of the Delaware-New Jersey Compact.

Section 5: Applicability

To the extent any provision in these regulations conflicts with any portion of the Authority Compact, Authority By-Laws or any Commissioners' Resolutions, the conflicting provision herein is expressly superseded.