

CHAPTER 20 FREEDOM OF INFORMATION

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2000 PURPOSE AND APPLICATION

2000.1 This Chapter contains the rules and procedures to be followed by the District of Columbia Board of Elections and Ethics (hereinafter "the Board") in implementing the Freedom of Information Act, D.C. Law 1-96, 23 D.C. Reg. 3744 (1977).

2000.2 Employees may continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties prior to enactment of D.C. Law 1-96

2000.3 The policy of the Board is one of full and responsible disclosure of its identifiable records consistent with the provisions of D.C. Law 1-96. All records not

exempt from disclosure shall be made available. Moreover, records exempt from mandatory disclosure shall be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191-92 (February 12, 1999).

2001 BOARD RESPONSIBILITY

2001.1 The General Counsel is the information officer of the Board and has the authority to grant and deny requests for Board records.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1192 (February 12, 1999).

2002 REQUESTS FOR RECORDS

2002.1 A request for a record of the Board must be made in writing and shall be directed to the General Counsel.

2002.2 Any request for records covered by this chapter shall be deemed to be a request for records pursuant to the Act whether or not the Act is mentioned in the request.

2002.3 Both the envelope and the letter requesting records shall clearly indicate that the subject is a freedom of information request.

2002.4 A request shall reasonably describe the desired record. Where possible, specific information requesting dates, files, titles, file designation or other specific information, shall be supplied.

2002.5 Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the Board without an unreasonable amount of effort, the requester shall be contacted and asked to supply the necessary information. Every reasonable effort shall be made by the Board to assist in the identification and location of requested records.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1192 (February 12, 1999).

2003-04 RESERVED

2005 TIME LIMITATIONS

2005.1 Within ten (10) days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the Board shall determine whether to comply with or to deny

the request and shall dispatch its determination to the requester, unless an extension is made pursuant to §§ 2005.2 and 2005.3.

2005.2 In unusual circumstances as specified in § 2005.3, the Board may extend the time for initial determination on a request up to a total of ten (10) days (excluding Saturdays, Sundays, and legal public holidays).

2005.3 Extensions shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected. As used in this section "unusual circumstances" means, but only to the extent necessary to the proper processing of the request, either of the following:

(a) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(b) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

2005.4 If no determination has been disputed at the end of the ten-day period, or the extension thereof, the requester may deem his request denied, and exercise a right to appeal in accordance with § 2012.1.

2005.5 When no determination can be dispatched within the applicable time limit, the Board shall nevertheless continue to process the request. On expiration of the time limit the Board shall inform the requester of the reason for the delay, of the date on which a determination may be expected, and of his right to treat the delay as a denial of the appeal rights provided by the Act. The Board may ask the requester to forgo appeal until a determination is made.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 11191, 1192-93 (February 12, 1999).

2006 EXEMPTIONS

2006.1 No requested record shall be withheld from inspections or copying unless both of the following criteria apply:

(a) It comes within one of the classes of records exempted by D.C. Law 96; and

(b) There is need in the public interest to withhold it.

2006.2 The classes of records authorized to be exempted from disclosure are those which concern matters that are of the following nature:

(a) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(b) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(c) Investigatory records compiled for law enforcement purposes, but not only to the extent that the production of those records would do the following:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclosure of the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclosure of the investigative techniques and procedures generally known outside the government; or

(6) Endanger the life or physical safety of law enforcement personnel;

(d) Inter-agency or intragency memoranda or letter which would not be available by law to party other than an agency in litigation with the Board;

(e) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(f) Information specifically exempted from disclosure by statute (other than this section), provided that the statute does one of the following:

(1) Requires that the matters be withheld from the public in a manner as to leave no discretion on the issue; or

(2) Establish particular criteria for withholding or refers to particular types of matters to be withheld; and

(g) Information specifically authorized by Federal law under criteria established by a Presidential Executive Order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to that Executive Order.

2006.3 Any reasonably segregable portion of a record shall be provided to any person requesting the record after deletion of those portions which are exempt under this section.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1193-94 (February 12, 1999).

2007 RESPONSE TO REQUESTS

2007.1 When a requested record has been identified and is available, the Board shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall also advise the requester of any applicable fees.

2007.2 A response denying a written request for a record shall be in writing and shall include the following information:

- (a) The identity of the official responsible for the denial;
- (b) A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how each exemption applies to the record withheld and a statement of the public interest considerations which establish the need for withholding the record. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record withheld; and
- (c) A statement of the appeal rights provided by the Act.

2007.3 If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1195 (February 12, 1999).

2008 FEES

2008.1 Charges for services rendered in response to information requests shall be as follows:

- (a) Searching for records, per quarter hour, after 1st hour, by clerical personnel – (Maximum of ten dollars (\$10.00) for each request) ... one dollar and fifty cents (\$1.50);
- (b) Non-routine searching, per quarter hour, by supervisory personnel – (Maximum of ten dollars (\$10.00) for each request)... three dollars (\$3.00);
- (c) Copies made by electrostatic copy machines – (Maximum of two copies will be provided) ... ten cents (\$.10).

2008.2 When a response to a request requires services or materials for which no fee has been established, the direct cost of the services or materials to the government may be charged, but only if the requester has been notified of the cost before it is incurred.

2008.3 Where an extensive number of documents are identified and collected in response to a request and the requester has not indicated in advance his willingness to pay fees as high as are anticipated for copies of the documents, the Board shall inform the requester that the documents are available for inspection and for subsequent copying at the established rate.

2008.4 A charge of one dollar (\$1.00) shall be made for each certification of true copies of Board records.

2008.5 Search costs, not to exceed ten dollars (\$10.00) for each request, may be imposed even if the requested record cannot be located. No fees shall be charged for examination and review by Board to determine whether a record is subject to disclosure.

2008.6 Fees shall be paid in full prior to issuance of requested copies.

2008.7 Remittance shall be in the form either of a personal check or bank draft on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the D.C. Treasurer and mailed or otherwise delivered to the General Counsel for the Board. The Board shall not assume responsibility for cash which is lost in the mail.

2008.8 A receipt for fees paid shall be given only upon request. No refund shall be made for services rendered.

2008.9 The Board may waive all or part of any fee when it is deemed to be either in the Board's interest or in the interest of the public.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1195-96 (February 12, 1999).

2009-11 RESERVED

2012 REVIEW OF DENIALS

2012.1 When a request for records has been denied in whole or in part by the General Counsel, the requester may appeal the denial to the Mayor may seek immediate judicial review of the denial in the Superior Court.

2012.2 An appeal to the Mayor shall be in writing, and shall include a statement of the circumstances, reasons or arguments advanced in support of disclosure, and a copy of any written denial issued pursuant to § 2006.2.

2012.3 Unless the Mayor otherwise directs, the Secretary shall act on behalf of the Mayor on all appeals under this section, except that in the case of an initial denial by the Secretary, the Mayor or his or her designee shall act on the appeal.

2012.4 A written determination with respect to an appeal shall be made within ten (10) working days of the filing of the appeal.

2012.5 If the records, or any segregable part of thereof, are found to have been improperly withheld, the Mayor may order the Board to make them available. If the Board continues to withhold the records, the requester may seek enforcement of the order in the Superior Court.

2012.6 A denial in whole or in part of a request on appeal shall set forth the exemption relied upon, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it. The denial shall also inform the requester of the right of judicial review.

2012.7 If no determination has been dispatched at the end of the ten-day period, the requester may deem his request denied, and exercise his right to judicial review of the denial.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1196-97 (February 12, 1999).

2013 RECORDS MAINTAINED BY THE BOARD

2013.1 The Board shall make and maintain records pertaining to each request for information, including copies or correspondence. The material shall be filed by individual request.

2013.2 The Board shall maintain a file, open to the public, which shall contain copies of all letters of denial.

2013.3 Where the release of the identity of the requester or other identifying details related to the request would constitute a clearly unwarranted invasion of personal privacy, the Board shall delete identifying details from the copies of the documents maintained in the public files.

2013.4 The Board shall also maintain records permitting annual reporting of the following information:

- (a) Total number of requests made to the Board;
- (b) The number of requests granted and denied, in whole or in part;

(c) The number of times each exemption was invoked as the basis for non-disclosure;

(d) The names and titles or positions of each person responsible for the denial of records and the number of instances each person was involved in a denial; and

(e) The amount of fees collected, and the amount of fees for duplication and search waived by the Board.

2013.5 On or before the thirty-first (31st) day of March of each calendar year, the Board shall compile and submit to the Secretary its reports pursuant to the provisions of this section and on other matters relating to Board compliance with the terms of the Act.

2013.6 With respect to appeals taken pursuant to § 2012, the Secretary shall maintain records reflecting the number of appeals taken, the result of the appeals, and the number of times each exemption was invoked as a basis for non-disclosure.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1197-98 (February 12, 1999).

2014 RESERVED

2015 OVERSIGHT

2015.1 On or before the thirtieth (30th) day of June of each calendar year, the Secretary shall compile and submit to the Council of the District of Columbia on behalf of the Mayor, a report covering the disclosure activities of each agency and of the Executive as a whole during the preceding year.

SOURCE: Final Rulemaking published at 46 D.C. Reg. 1191, 1198 (February 12, 1999).

2016-17 RESERVED