

Town of Cheswold

Policy Statement of Freedom of Information Act (FOIA)

Section 1. Policy Statement:

The purpose of this policy is to designate procedures relating to the inspection and duplication of public records held by the Town of Cheswold pursuant to 29 Delaware Code, Chapter 100 the Freedom of Information Act for the State of Delaware and it applies to the Town in its dealing with requests from the public for information as set forth in the FOIA.

It is the goal of the Town to implement this policy to maximize the amount of information available to the public; to streamline procedures used to disseminate information and to establish a reasonable fee structure for providing public records.

The Town believes public business should be performed in an open and public manner so that citizens are advised of the performance of officials and their decisions. In accordance with the FOIA, the public has the right to reasonable access to public records. It is the responsibility of the Mayor and Council to establish rules and regulations regarding access to records as well as fees charged for copying of such records. All employees of the Town of Cheswold shall comply with the FOIA and all requests for information shall be processed in the following manner:

Section 2. Exemption

This policy does not apply to the Town in its normal business with Federal, State or local agencies, nor to any records identified as exempt by 29 Del C.; Chap. 100; §10002; Sub-Section I, (Public Record definition) – Items 1 - 19.

Section 2 – Definitions

The following terms shall have meaning specified below, in compliance with the definitions specified in 29 Del C.; Chap. 100; § 10002. In any case where there is a disagreement with the definitions specified in this document and the definitions of the Delaware Code, the definitions of the Delaware Code shall supersede.

Act - Freedom of Information Act as described in 29 Del.C. Chapter 100.

Agenda – shall include but is not limited to a general statement of the major issues expected to be discussed a public meeting, as well as a statement of intent to hold an executive session and the specific grounds for such meeting as specified in 29 Del C.; Chap. 100; § 10004; Section (b).

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Section 2 – Definitions

Coordinator – individual holding position of Town Secretary

Department – individuals engaged in like job responsibilities and assigned a specific group name operating for the benefit of Cheswold

Exempt – information determined by the Record Coordinator and/or Town Solicitor to constitute a record that shall not be deemed public in accordance with 29 Del.C. ; Chap. 100; § 10002; Sub-section (g) (1 –19).

FOIA – Freedom of Information Act as described in 29 Del.C. Chapter 100.

Meeting – 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.

Processor –individual holding position of Town Clerk

Public Body – shall mean the Town Council; and Planning Commission or any other department or group appointed by the Town Council and meets the definition of public body as specified in 29 Del.C. ; Chap. 100; § 10002; Sub-section (h) (1 –3).

Public Business – shall mean any matter over which the public body has supervision, control, jurisdiction or advisory power.

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.

Request – a request to inspect or copy public records pursuant to 29 Del.C.; Chap. 100; § 10003.

Requestor – any individual, organization, or business of the State of Delaware that submits a request for information under the Delaware Freedom of Information Act.

Revisions – changes to a posted agenda during or prior to the beginning of a posted meeting.

Special /Re-scheduled Meeting – a meeting to be held less than 7 days after the scheduling decision is made.

Town – the Town of Cheswold and/or Town Council.

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Section 3. Records Availability:

- 3.1** The Town will provide reasonable access and facilities for reviewing public records during regular business hours, (Monday – Friday; 8:30 am – 4:30 pm).
- 3.2** FOIA requests may be submitted by using the FOIA Request Form accessible at the Cheswold Town Hall, 691 Main Street, Cheswold, DE 19904; via postal mail at Town of Cheswold, P.O. Box 220, Cheswold, DE 19936 or on the Town website:
<https://cheswold.delaware.gov>.
- 3.3** The Town shall make all requested records available for review by the requestor unless such records or even portions of the records are determined to be exempt pursuant to 29 Del C.; Chap. 100; §10002; Sub-Section l, (Definition of Public Record) – Items 1- 19.

Section 4. Request Review:

- 4.1** Prior to disclosure, records will be reviewed to insure records or portions of records deemed non-public are removed. The types of records deemed non-public are explained in 29 Del C.; Chap. 100; §10002; Sub-Section l, (Defintion of Public Record), Items 1- 19.
- 4.2** Upon request, the Town will provide a log of records, which may have been deemed non-public. The log will include the following information:
- (1) The document’s author
 - (2) The addressee
 - (3) The date of the document
 - (4) The title of the document or a brief explanation of the document’s contents
 - (5) The statutory exemption
- 4.3** The types of records deemed non-public are as contained in 29 Del.C. Section §10002 (l); Items 1 – 19.

Section 5. Requests for Public Records in Custody of the Town:

- 5.1** Request for access to records shall be in writing, signed by the citizen, and clearly identify the specific public record/s sought in sufficient detail to enable the Town locate record/s with reasonable effort.

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Section 5. Requests for Public Records in Custody of the Town:

5.2 Requests should be submitted on the form approved by the Town Council, (05-22-2012-002 FOIA), at Town Hall, 691 Main Street, Cheswold, DE 19936 or via the Town website: <https://cheswold.delaware.gov>; (left side of page) FORM/FOIA FORM

5.3 Neither the act, nor the policy requires the Town to create a public record.

5.4 The Town may request the requestor to provide additional information known to the requestor, such as:

- Types of record/s
- Dates
- Parties to correspondence
- Subject matter of the requested record/s

Section 6. Requests for E-Mail:

6.1 Requests for e-mail records will be provided by the Town from our own records, if it can be done with reasonable effort.

6.2 If the Town cannot fulfill all or any portion of such a request, the Town will request that its e-mail carrier provide the requested e-mails to the Town.

6.3 Before requesting the e-mail carrier to provide the requested e-mail records, the Town will provide an itemized cost estimate to the requestor, listing all charges expected to be incurred in retrieving such records.

6.4 The requestor may then decide whether to proceed, cancel or modify the request.

6.5 Responses to e-mail requests after completion of Items 6.1 to 6.4 of this section, will then follow then follow the response dictates of Section 8 of this policy

Section 7. Requests for Public Records Not in Custody of the Town:

7.1 If all or any portion of a request seeks records controlled by the Town but are not within its possession or otherwise cannot be fulfilled by the Town with reasonable effort from the records in its possession, then the Town will promptly request the relevant custodian to provide the records not in the custody of the Town.

7.2 Before requesting any records not in the possession of the Town, the Town will provide an itemized cost estimate to the requestor, listing all charges expected to be incurred in retrieving such records.

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Section 7. Requests for Public Records Not in Custody of the Town:

- 7.3 The requestor may then decide whether to proceed, cancel or modify the request.
- 7.4 Responses to requests for records not in the custody of the Town will then follow then follow the response dictates of Section 8 of this policy.

Section 8. Responses to Requests for Public Records

- 8.1 The Town will respond to a FOIA request as soon as possible, but in any event within 15 business days, after the receipt of the request, either by providing access to the requested record/s; denying access to the records or parts of them, or by advising that additional time is required because the request is for voluminous records and requires legal advice, or a records in storage or archived.
- 8.2 If access to a requested record/s cannot be provided within 15 business days, the Town shall provide one, (1) of the reasons cited in Section 6.1 above as to why additional time is required and will provide a good-faith estimate of how much additional time is required to fulfill the request.
- 8.3 If the Town denies a request in whole or in part, the denial shall indicate the reasons for the denial. The Town is not required to provide an index, or any other compilation, as to each record or part of a record denied.

Section 9. Responses to Requests for Public Records

- 9.4 When the Records Processor cannot determine if a requested item is a “public record”, the request will be reviewed by the Records Coordinator for consultation with the Town Solicitor to determine if the requested document/s are a “public record” and fall under the jurisdiction of the FOIA.
- (1) A request may be denied in part or in full and returned to the requestor for the following reasons:
- (a) The request does not adequately describe the records;
 - (b) The request requires the Town of Cheswold to create records, perform research, prepare a compilation of records, summarize information, or place information in a required format;
 - (c) Reasons addressed in other areas of this policy not specified here.

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Section 9. Responses to Requests for Public Records

- (2) Records will be reviewed to withhold from disclosure those records, or portions of records, which the Act does not deem public.
- (3) The review of any requested documents must be performed during regular business hours in the presence of the Records Coordinator or Processor or by a Cheswold employee as designated by Town Council. In no event will access be provided at a time, or in a manner, which disrupts the normal operations of the Town of Cheswold.
- (4) No original documents may be removed from the Town of Cheswold property by the requesting citizen.
- (5) The Town of Cheswold reserves the right to deny any request in part or in full which does not comply with the requirements of this policy and/or the provisions of the Act.

Section 10. Town Review Prior to Records Release:

- 10.1 The Town retains the right to review records prior to disclosure to the requestor, to ensure that those records or portion of records deemed non-public may be removed pursuant to 29 Del.C.; Title 100; §10002.
- 10.2 In reviewing the record/s, all documents shall be considered public records unless subject to one of exceptions set forth in 29 Del.C.; Title 100; §10002 or any other applicable provision of law.

Section 11. Copying:

- 11.1 Copying of requested public records may be performed by Town personnel, and provided as follows:
 - 11.1.a. The Town may, in its discretion, provide copies of the requested record/s at the time the request is presented, or copy and mail the records to the requestor.
 - 11.1.b. The requestor may also elect to pick up the copies during regular business hours and submit payment at that time.
- 11.2 Requested documents will be copied in existing form, without reformatting or creation of a new document, unless such customization is deemed reasonable and appropriate by the Town.

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Section 12. Fees for Copying

12.1 Standard sized, black and white copies of Paper Records:

- 12.1.a. First 5 pages = Free of Charge
- 12.1.b. Pages 6 – 20 = \$0.20 per page
- “ 12.1.c. Page 21 and over = \$0.25 per page

12.2 Oversized, (8.5”x 14” or 11”x17”), black and white copies of Paper Records:

- 12.2.a. First 5 pages = \$0.20 per page
- 12.2.b. Pages 6 – 20 = \$0.25 per page
- “ 12.2.c. Page 21 and over = \$0.30 per page

12.3 Oversized, (24”x36” or larger), black and white copies of Paper Records

- 12.3.a. First 5 pages = \$1.00 per page
- 12.3.b. Pages 6 – 20 = \$1.25 per page
- “ 12.3.c. Page 21 and over = \$1.50 per page

12.4 Standard sized, color copies of Paper Records:

- 12.1.a. First 5 pages = \$1.50
- 12.1.b. Pages 6 – 20 = \$1.75 per page
- “ 12.1.c. Page 21 and over = \$2.00 per page

12.5 Oversized, (8.5”x 14” or 11”x17”), color copies of Paper Records:

- 12.2.a. First 5 pages = \$2.25 per page
- 12.2.b. Pages 6 – 20 = \$2.50 per page
- “ 12.2.c. Page 21 and over = \$2.75 per page

12.6 Oversized, (24”x36” or larger), color copies of Paper Records

- 12.3.a. First 5 pages = \$3.00 per page
- 12.3.b. Pages 6 – 20 = \$3.25 per page
- “ 12.3.c. Page 21 and over = \$3.50 per page

12.7 Development Plans are available for a charge of \$10.00 for the first sheet; \$5.00 each additional sheet.

Section 13. Charges for Copying Other Media and/or Records:

13.1 Audio - copies of Town Council or Planning meetings on CD, if they are available = \$10.00 each, for a charge of \$10.00 each.

13.1.a. Some meetings may run onto two or more CDs; in this case, the first CD is \$10.00; each additional CD is \$5.00, as long as the taping is from the same meeting.

13.2 Microfilm and/or Microfiche Printouts – the Town has no documents of any type on this medium.

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Section 13. Charges for Copying Other Media and/or Records:

13.3 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.

Section 14. Administrative Fees

- 14.1** Administrative fees shall be charged for requests requiring more than 1 hour of staff time to process.
- 14.2** Administrative fees may include, but not be exclusive to:
- 14.2.a.** Time associated with processing FOIA requests
 - 14.2.b.** Generating computer records, (electronic or print-outs).
- 14.3** Administrative fees **shall not include** any cost associated with review by the Town Solicitor.
- 14.4** Every effort will be made by the Town to minimize administrative fees and will only assess charges as shall be reasonable in the process of FOIA requests.
- 14.5** The Town will minimize the use of non-administrative personnel in processing FOIA requests to the extent possible.
- 14.6** Prior to fulfilling any request that would require a requestor to incur administrative fee, the Town will provide an itemized cost estimate to the requestor, listing all charges expected to be incurred in the retrieval of such records.
- 14.7** The requestor may then decide whether to proceed, cancel or modify the request.
- 14.8** Administrative fees will be billed to the requestor, on a per quarter hour basis, at the current hourly pay grade of the lowest paid employee capable of performing the service.
- 14.9** Administrative fees will be in addition to any other charges incurred in association with copying records.
- 14.10** When multiple FOIA requests are submitted by a requestor in an effort to avoid incurring administrative charges, the Town may in its discretion combine staff time for all such requests when computing the total administrative cost to be charged.
- 14.11 Waiver** – administrative costs will be assessed a requestor representing a non-profit organization that provides proof of their 501C status.

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Section 15. Payments

15.1 The Town requires all of the fees and charges due, to be paid prior to the processing and copying of any requests.

Section 16. FOIA Coordinator

16.1 The Town has designated the Town Secretary to be the FOIA Coordinator.

16.2 The Coordinator will serve as the point of contact for requests and coordinate responses of the Town.

16.3 The identification of the FOIA Coordinator is posted on the Town website:
<https://cheswold.delaware.gov>

16.4 The Town Clerk shall assist the FOIA Coordinator in the processing of FOIA requests and shall hold the title of FOIA Processor.

Section 16. FOIA Coordinator

16.5 The Coordinator and Processor will make every reasonable effort to assist the requestor in identifying the records being sought, and to assist the Town in locating and providing the requested records.

16.6 The Coordinator and Processor will also work to foster cooperation between the Town and the requestor.

16.7 The Coordinator shall maintain a document tracking all FOIA requests.

16.8 The **FOIA Tracking Document** shall include, at a minimum:

16.8.a. Requesting parties contact information

16.8.b. Date request was received

16.8.c. Date response is due to requestor

16.8.d. Date of response returned to requestor:

16.8.d.1 Must include reasons for any extensions

16.8.e. Information concerning individuals contacted in connection with request/s:

16.8.e.1 Names

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Section 16. FOIA Coordinator

- 16.8.e.2** Contact Information (address; phone #'s; fax #'s; e-mail address; city; state; zip)
- 16.8.e.3** Date of Town review of the request
- 16.8.e.4** Names of individuals who conducted the review
- 16.8.e.5** Status of request (pending; completed; denied – reason for denial if appropriate)
- 16.8.e.6** Copying Statistics:
 - 16.8.e.1** Type
 - 16.8.e.2** Size
 - 16.8.e.3** Number of copies
- 16.8.e.7** Charge for copying
- 16.8.e.8** Charge for administrative fees
- 16.8.e.9** Date of Final Disposition

Section 17. Retention of Requests:

- 17.1** FOIA requests will be retained by the Town, under the supervision of the FOIA Coordinator and Processor as specified by the State of Delaware Retention Schedule–Series LGADM-022.

Section 18. Open Meetings (Including Town Council and Workshop Meetings)

- 18.1** Every meeting of the Town shall be open to the public except for Executive Sessions as specified in 29 Del.C.; Chapter 100; §10004; Sub-sections (b); (c); (d); and (h).
- 18.2** **Executive Sessions** will only be scheduled for the reasons provided in 29 Del.C.; Chapter 100; §10004; Sub-section (b)(1-9).
 - 18.2.a.** Executive Sessions will be closed to the public upon affirmative vote of a majority of members present at a meeting of the Town.

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Section 18. Open Meetings (Including Town Council and Workshop Meetings)

- 18.2.b.** The vote on the question of holding an Executive Session will take place at a meeting of the Town which will be open to the public, and the results of the vote will be made public and will be recorded in the minutes.
- 18.2.c.** The intention of conducting an Executive Session will be posted on the agenda prior to the meeting.
- 18.2.d.** The purpose of the Executive Session will be set forth in the agenda and will be limited to the purposes listed in 29 Del.C.; Chapter 100; §10004; Sub-sections (b).

18.3 The Town retains the right to remove any person from a public meeting who is willfully and seriously disruptive of the conduct of the meeting.

18.4 Notice of Meetings

- 18.4.a.** The dictates specified in Section 18 of this policy will not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety of the Town.
- 18.4.b.** The Town will give public notice of our regular meetings and of our intent to hold an Executive Session closed to the public, at least 7 days in advance of the meeting.
- 18.4.c.** The agenda will be added to the notice at least twenty-four, (24), hours prior to the meetings and include brief descriptions of the topics to be discussed.
- 18.4.d.** The agenda will be revised to include additional items including Executive Sessions or the deletion of items, including Executive Sessions, which arise at the time of the Town meeting.
- 18.4.e.** The reason/s for revision/s to the agenda will be posted to the agenda, if such revision/s is known 6 hours before the meeting. If not known, the reason for the revision/s will be stated at the meeting, by the Town Secretary and included in the minutes. (See 29 Del.C.; Chapter 100; §10004; Sub-sections (e)(2)).

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Section 18. Open Meetings (Including Town Council and Workshop Meetings)

18.4 Notice of Meetings

18.4.f. The Town will give public notice of any **special or re-scheduled meeting**, following the dictates of Section 18.4.c.; 18.4.d and 18.4.e, as soon as reasonably possible, but no later than 24 hours before the meeting.

18.4.g. The posting of any special or re-scheduled meeting will include an explanation of why the notice of the meeting could not be given following the dictates of Section 18.4.b.

18.5 Posting of Meetings

18.5.1 Notice of public meetings will be posted in the following locations:

18.5.1.a. Town Hall Bulletin Board
691 Main Street
Cheswold, Delaware 19904

18.5.1.b. Local Post Office
262 Main Street
Cheswold, Delaware 19936

18.5.1.c. Fox Pointe Rental Office
352 Fox Pointe Drive
Cheswold, Delaware 19904

18.5.1.d. Town of Cheswold Website
<https://cheswold.delaware.gov>

18.5.2 Special or emergency meetings will be posted on the Town Website within 24 hours of the meetings or as reasonably possible.

18.6 Minutes of Meetings

18.6.1 The Town Secretary will be responsible for maintaining the minutes of all Town meetings, including Executive Sessions.

18.6.2 The minutes of all meetings will be available for public inspection and copying following the dictates of the FOIA process.

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Section 18. Open Meetings (Including Town Council and Workshop Meetings)

18.6 Minutes of Meetings

18.6.3 All minutes must include the following:

18.6.3.a. Record of members present

18.6.3.b. Record of names of those voting (except where all residents of the Town are voting)

18.6.3.c. Record of each vote taken

18.6.3.d. Record of action agreed upon

18.6.3.e. Minutes of Executive Sessions may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the Executive Session, but no longer than that.

18.7 Location of Meetings

18.7.1 Every regularly scheduled meeting of the Town must be held within the geographic jurisdiction of the Town.

18.7.2 Until further notice and revision of this section, all Town meetings, whether regularly scheduled or deemed special and/or emergency, will be held in one of the following locations and posted on the associated agenda:

18.7.2.a. Town Hall
691 Main Street
Cheswold, Delaware 19904

18.7.2.b. Cheswold Fire Company
Fire Hall
371 Main Street
Cheswold, Delaware 19904

18.7.2.c. Cheswold Fire Company
2nd Floor Board Room
371 Main Street
Cheswold, Delaware 19904

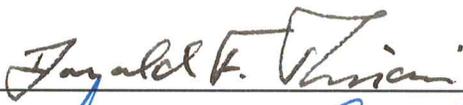
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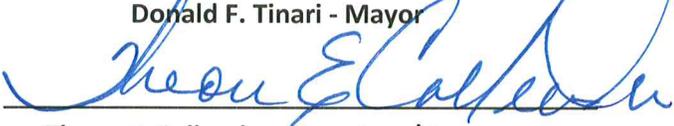
Section 19. Enforcement

- 19.1** Any action taken at a meeting in violation with this Policy may be voidable by the Court of Chancery.
- 19.2** Any citizen may challenge the validity of this Policy of any action of the Town, 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.
- 19.3** Any citizen denied access to Town records as provided in this Policy may bring suit within 60 days of such denial.
- 19.4** Venue in such cases where access to Town records are denied shall be placed in a court of competent jurisdiction for Kent County.
- 19.5** In any action brought under this Policy, the burden of proof shall be on the Town Coordinator to justify the denial of access to records, and responsibility shall be on the Town to justify a decision to meet in Executive Session or any failure to comply with this Policy.
- 19.6** Remedies permitted by FOIA include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief.
- 19.7** The court may award attorney fees and costs to a successful plaintiff of any action brought in violation of this Policy.
- 19.8** 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.
- 19.9** Any citizen may petition the Attorney General to determine whether a violation of this Policy has occurred or is about to occur.
- 19.10** The petition must briefly describe the nature of the alleged violation.
- 19.11** The response of the Office of the Attorney General is documented in 29 Del.C.; Chapter 100; §10005; Sub-section (e).

The Town of Cheswold Policy Statement of the Freedom of Information Act, (FOIA) was revised to adhere to the revisions of Title 29 State Government; General Regulations for State Agencies; Chapter 100 of the Freedom of Information Act- State of Delaware, effective September 16, 2013 and was approved and adopted by a quorum vote of the Town Council of Cheswold, at a regularly scheduled Town Council Workshop meeting, held on Tuesday, November 19, 2013, in Town Hall, located at 691 Main Street, Cheswold, Delaware 19904.

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CERTIFIED:  Date: November 19, 2013
Donald F. Tinari - Mayor

ATTEST:  Date: November 19, 2013
Theon E. Callender - Secretary/Treasurer

AFFIRMED:  Date: November 19, 2013
Robert W. Sine - Vice Mayor

AFFIRMED:  Date: November 19, 2013
Mildred Johnson - Councilperson

AFFIRMED:  Date: November 19, 2013
Sherry Lambertson - Councilperson

AFFIRMED: _____ Date: November 19, 2013
- VACANT POSITION - Councilperson

NOTARIZED:  Date: November 20, 2013
Shadina Jones - Town Clerk