

POLICY NUMBER	503
TITLE	FOIA Records Access Policy
ADOPTED	November 17, 2016
REVISED	December 16, 2021

PURPOSE

Under Title 29 of the Delaware Code, Chapter 100, the Freedom of Information Act (“FOIA”) establishes the right of the public to inspect and copy public records. Section 10003(b) of FOIA provides that a public body, including Freire Charter School Wilmington (“the School”), must establish rules and regulations regarding access to public records, as well as fees charged for copying such records.

At the same time, the School recognizes the need to maintain the confidentiality of the records of its employees, students and families, and our affiliates that contain certain Personally Identifiable Information (“PII,” defined below). The School handles different types of PII that could be subject to public release, such as educational records, personnel files, and board records. Guidelines for the release and handling of personnel information can be found in the Freire Employee Handbook. The public disclosure of educational or student records is governed by federal and state statutes, regulations, and separate school policies, including the Family Educational Rights and Privacy Act (“FERPA”) and the School’s Student Records Confidentiality and Annual FERPA Notification policies (which can be found in the School’s Student and Family handbook) and the School’s student records policy (Policy #502). The protection and release of all records and data produced by the School and its Board of Directors are governed by FOIA. Within the context of the laws and the School’s policies listed above, the School always protects Protected PII (defined below) and generally protects Public PII (defined below) from disclosure unless required by local, state, or federal law, court order, or as indicated herein or otherwise in the policies referenced above.

Any citizen shall be granted access to the School’s public records under the terms and conditions set forth herein.

FEDERAL LAW AND FEDERAL GRANT RECORDS

Public access to the School’s records that are related to a federal grant award will generally be subject to a U.S. Freedom of Information Act (5 U.S.C. 552) request and applicable exceptions. While certain School records may be subject to a request made under 5 U.S.C. 552, **“Freedom of Information Act” or “FOIA” as used herein refers specifically to Delaware’s Freedom of Information Act, 29 Del. C. §§ 10001, et seq.** The scope of this policy includes, but is not limited to, all School records pertinent to a federal award. The purpose of this policy includes compliance with federal Uniform Grant Guidance (2 CFR § 200.79, 200.82, and 200.337) and

sets forth requirements for the security and protection of PII throughout the School and its approved vendors both on and off work premises. The School recognizes that failure to correctly identify and protect PII could result in the loss of state or federal funding or present the risk of legal and financial repercussions.

DEFINITIONS

Personally Identifiable Information (PII): PII means any information that can be used to uniquely identify an individual's identity or any information that is linkable to an individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. PII may be further classified within two subcategories: Public PII and Protected PII.

Public PII: Generally, Public PII is all PII collected that can be used to identify an individual professionally and if disclosed, by itself, could not reasonably be expected to result in personal harm. Some information considered to be Public PII is available from public sources such as telephone books, public websites, and university listings. Public PII can include: first and last names, work and home addresses, work and home telephone numbers, work and home email addresses, and general education credentials. Depending on the circumstances, a combination of these items could potentially be categorized as Non-Public or Protected PII.

Protected PII: Protected PII means an individual's first name or first initial and last name in combination with any one or more types of information, including but not limited to: Social Security Number, passport number, Driver's license or state ID number, credit and debit card numbers, clearances, bank account numbers, biometric data, medical information and records, date and place of birth, mother's maiden name, criminal records (including driving records), financial records, citizenship or immigration status, and educational transcripts. Generally, Protected PII is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. If a document to be publicly released has a mixture of Public and Protected PII, compliance with this policy may be achieved through excision or redaction of the document as appropriate or required by law.

Public Record: Any written or recorded information made or received by the School relating to public business. A citizen is entitled to inspect and copy public records (as defined under 29 *Del. C.* § 10002) in the custody of the School. 29 *Del. C.* § 10002(o) defines "public record" to include: "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." FOIA does not require the School to create a public record which does not already exist in order to comply with a FOIA request.

Under FOIA, the following types of records are not "public records" and are therefore not subject to disclosure pursuant to any FOIA request:

- Any personnel, medical, or pupil file, the disclosure of which would constitute an invasion of personal privacy, under any state or federal law as it relates to personnel privacy.
- Financial information obtained from a person which is of a privileged or confidential nature.
- Investigative files for law enforcement purposes.
- Any records specifically exempted from public disclosure by statute or common law.
- Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the School whenever public anonymity has been requested by the contributor.
- Any records involving labor negotiations or collective bargaining.
- Any records pertaining to pending or potential litigation which are not records of any court.
- Any record of discussions held in executive session.

Documents in Active Use: Records required as working documents by School staff in performing current assignments.

Documents in Storage: Documents officially placed in the custody of the Delaware State Archives.

FOIA COORDINATOR

The Head of School shall assign a coordinator to respond to all FOIA requests (the "FOIA Coordinator"). The FOIA Coordinator may designate other employees or staff members at Freire Schools Collaborative to assist in the performance of his/her/their duties. The FOIA Coordinator shall maintain a document tracking all FOIA requests, including: the requesting party's contact information; the date the FOIA request was received; the School's response deadline; the date of the response; the names, contact information, and dates of correspondence with individuals contacted in connection with each FOIA request; the dates of review by the School employee and the names of employees conducting reviews; reasons for any extension; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition. References to the FOIA Coordinator include the FOIA Coordinator's designee(s).

WEB PORTAL

The School shall develop and maintain a web page for access to this policy; the FOIA Request Form promulgated by the Office of the Attorney General; the name and contact information of the FOIA Coordinator; and the receipt of FOIA requests via the internet.

PROCEDURES FOR EXAMINING, COPYING OR REQUESTING PUBLIC RECORDS

Except for materials and documents in Active Use or in Storage, all public records may be examined and copies obtained at the School, 201 West 14th Street, Wilmington, DE 19801, during regular business hours. Initial requests to inspect public documents shall be made in writing and delivered in person, by email, by fax, or to the School's web portal. The request shall be as specific as possible and shall describe the records sought in sufficient detail to enable the School to locate the records with reasonable effort.

The FOIA Coordinator may request that the citizen seeking public records (the "requesting Party") provide additional information to assist in locating the records such as the types of records, parties to correspondence (if applicable), and subject matter of the requested records. The FOIA Coordinator shall make every reasonable effort to assist in identifying the records sought.

FOIA does not require the School to create records, or prepare summaries or compilations of records.

If the request seeks records in the possession of, and under the control of, another public body, the FOIA Coordinator will promptly forward the request to such public body and notify the Requesting Party that the request has been forwarded. If, on the other hand, the records sought are controlled by the School, but are not within the School's possession, the School will provide an itemized written estimate of the cost of retrieving the records. The Requesting Party shall then decide whether to proceed with, cancel, or modify the request.

The School's FOIA Coordinator will respond to the Requesting Party within fifteen (15) business days and state whether the information requested is available and when or where it will be made available. If a delay of the requested records is anticipated, the FOIA Coordinator will explain the reason for the delay and provide an expected date and time when the Requesting Party will have access to the public records sought.

The School may deny a Requesting Party access to a public record (in part or in full) if the Requesting Party has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the School or if the Requesting Party fails to comply with the requirements of this policy and/or the provisions of FOIA.. A denial under this subsection may not restrict a Requesting Party's entitlement to request a different record. If the School denies a request in whole or in part, the School's response shall indicate the reasons for the denial. The School is not required to provide an index, or any other compilation, as to each record or part of a record denied.

Prior to disclosure, records may be reviewed by the School to ensure that those records or portions of records deemed Protected (as discussed above) may be removed pursuant to §10002(g) of FOIA or any other applicable law.

The review of any requested records must be performed during regular business hours in the presence of a School employee designated by the FOIA Coordinator. In no event will access be provided at a time, or in a manner, which disrupts the normal operations of the School. No original records may be removed from School

property by the Requesting Party. Any review of an original records will be in the presence of a member of the School's staff coordinated by the FOIA Coordinator.

The School will provide emails if it is able to reasonably do so. If the assistance of School information and technology personnel is necessary in order to provide emails, the School will provide the Requesting Party an itemized written estimate of the charges that will be incurred in retrieving such electronic records. The Requesting Party shall then decide whether to proceed with, cancel, or modify the request.

COPYING

The School, in its discretion, may copy and mail records to the Requesting Party. The Requesting Party may elect to pick up the copies during regular business hours and submit payment at that time.

Requested records will be copied in existing form, without reformatting or creation of a new document unless such customization is deemed reasonable and appropriate by the FOIA Coordinator. Copying of a public document shall be done by the relevant division.

COPYING FEES

The cost of providing copies of paper records shall be:

- (a) There is no charge for the first 20 pages of standard sized (i.e., 8.5" x 11"; 8.5" x 14"; and 11" x 17"), black and white copies, and \$0.10 per page for each page in excess of 20 pages (\$.20 for double sided).
- (b) The charge for copying 18" x 22" shall be \$2.00 per page; 24" x 36" shall be \$3.00 per page; and larger than 24" x 36" shall be \$1.00 per square foot.
- (c) Color copies/printouts shall cost an additional \$1.00 per page for standard sized copies, and an additional \$1.50 per page for larger copies.

ELECTRONICALLY GENERATED RECORDS

The cost of copying records maintained in electronic format will be equal to the material costs in generating the records (i.e., the DVD, CD, or other electronic storage costs).

PAYMENT

One-half of the estimated fees shall be paid before any service is performed, and the balance is payable upon completion of the service, and prior to receipt of the requested records. Payment for copies is due at the time copies are to be released to the Requesting Party. The School may require prepayment of copying, administrative, and mailing fees prior to mailing copies of requested records. The School reserves the right to refuse to provide copies for Requesting Parties who have outstanding balances. School personnel will maintain a receipt register and, upon request, provide a receipt to the Requesting Party when payment is received. All payments will be made to:

Freire Charter School Wilmington
201 West 14th Street
Wilmington, DE 19801
Attn: FOIA Coordinator

ADMINISTRATIVE FEES

There will be no charge for one hour or less of staff time to process a request for records (i.e., identifying records; monitoring review of records; and generating computer records in electronic or print-out form). Administrative fees shall not include legal consultation to determine whether records are exempt from disclosure.

Prior to fulfilling any request requiring a Requesting Party to incur administrative fees, the School will provide an itemized written estimate of the administrative fees. The Requesting Party will decide whether to proceed with, cancel, or modify the request.

In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged. All electronic files will be sent in a read-only format unless the Requesting Party specifically requests Excel format.

Administrative charges will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade rate of the lowest paid School employee capable of performing the service. Every reasonable effort shall be made to minimize administrative fees. Administration charges will be in addition to any copying charges.

When a Requesting Party submits multiple FOIA requests, the School will attempt to avoid, or minimize, administrative fees by aggregating staff time to process such requests.

NOTHING IN THIS POLICY SHALL BE CONSTRUED TO MODIFY, RESCIND, OR SUPERSEDE ANY RECORD RETENTION POLICY OR DISPOSITION SCHEDULE OF THE SCHOOL.

TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS CONTROL.