



Delaware Local Government FOIA Audit 2010

Delaware Local Government FOIA Audit, 2010
League of Women Voters of Delaware

Executive Summary

Almost 200 years ago, James Madison wrote, "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both." His words remain a call to action today.

Given the gravity of the issues facing our nation, the need for public access to governmental decisions and policies that affect all Americans is greater than ever. Public transparency and access to public information allow citizens to hold their government accountable at the local, state, and national level. Whether it is to track how federal stimulus dollars are being spent or to attend a local government meeting where land use or school funding decisions are being made, "sunshine laws" afford us access and insure government transparency.

The best laws are only as good as we, the people, demand that they be. No matter how well intentioned, the real test of a law's value is how effectively it advances its purpose and how it serves the public when actually put to use. In the thirty three years since its passage, Delaware's Freedom of Information Act (FOIA) has never undergone a quantitative statewide examination of its implementation - until now .

In 2009 the League of Women Voters of Delaware (LWVDE) was one of twelve state Leagues to receive a grant to conduct a FOIA Audit of its local governments. In May of 2009, LWVDE launched a statewide audit of local

public bodies. Seventeen League members visited thirty four agencies, including municipalities, school districts and county governments. The audit included small, medium and large sized towns and cities.

Summary Findings:

Generally, as a group, municipalities and counties were more forthcoming in providing records than were school districts. Small towns were more transparent than were cities. Records that are generally posted on agency websites (agenda and minutes) were provided more readily than other records (budgets and grants). Financial records (salaries of individuals and expense accounts) were seldom provided.

The user-friendly interface between League auditors and agency record-keepers varied widely from one agency to another. School district records were more centralized - often two visits were sufficient. City records were often scattered among various departments and offices, thus requiring multiple revisits. Copying costs for records generally were within the "reasonable" price range. The time frame for providing records varied from: same day, a few days to a month.

*Margaret McKay, PhD, Chair
FOIA Project*

Delaware Local Government FOIA Audit, 2010

League of Women Voters of Delaware

I. Introduction:

Almost 200 years ago, James Madison wrote, "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both." His words remain a call to action today.

Given the gravity of the issues facing our nation, the need for public access to governmental decisions and policies that affect all Americans is greater than ever. Access to this information allows citizens to hold their government accountable at the local, state, and national level. Whether it is to track how federal stimulus dollars are being spent or to attend a local government meeting where land use or school funding decisions are being made, "sunshine laws" afford us access and create government transparency.

The best laws are only as good as we, the people, demand that they be. No matter how well intentioned, the real test of a law's value is how effectively it advances its purpose and how it serves the public when actually put to use. In the thirty-three years since its passage until now, Delaware's Freedom of Information Act (FOIA) has never undergone a quantitative state-wide examination of its implementation.

In 2009 the League of Women Voters of Delaware (LWVDE) was one of twelve state Leagues to receive a grant to conduct a FOIA Audit of its local governments. In May of 2009, LWVDE launched a state wide review of thirty-four local public bodies which included municipalities, school districts and all three county governments. It included small, medium and large sized towns and cities.

II. Background: Delaware's FOIA:

Delaware's Freedom of Information Act (FOIA) was enacted on July 25, 1976, and went into effect on January 1, 1977. Delaware's FOIA required that all public records and meetings (with specific exceptions) be open to the public. The exceptions provide protection for personal and/or commercial records. It also identifies certain types of public meetings and the circumstances surrounding such meetings that may be held free of public view in Executive Session.

Over the years amendments have clarified and strengthened Delaware's FOIA. Often these changes have come about as the result of specific public complaints or court cases. Opinions from the Office of the Attorney General have added specificity to the law's language, particularly where the term "reasonable" required clarification.

Delaware's Open-Government law have some significant strengths and some weaknesses. Despite these changes, on a national comparison, Delaware's FOIA doesn't fare very well. In a 2008 state- by-

state assessment by the Better Government Association, a nonpartisan government watchdog group <<http://www.nfoic.org/bga>>, Delaware ranked 43rd on the open meetings index. An earlier study in 2002 ranked Delaware at 38th. on that same index. The drop in ranking over the six-year period suggests Delaware is losing ground compared to other states on the measure of public transparency. However, since the 2008 study was done prior to the enactment of HB 1 in 2009 that removed the General Assembly's exemption from FOIA, the next national study ranking state comparison should elevate Delaware's status.

III. Purpose of the Audit:

The FOIA Audit sought to hold up a mirror to local governments' open records performance. In so doing, it hoped to create a statewide profile that reflects how faithfully local public bodies are complying with FOIA and by extension, how transparent Delaware's local governments are.

The purpose of the audit was to assess two aspects of the law' implementation:

1) how faithfully local governments are adhering to the statutory process in responding to FOIA requests for public records (time frame, copying costs and in a proper format).

2) how faithfully do public agencies provide the requested records. Procedurally, the audit measured the "user-friendly" atmosphere of the FOIA request experience. For example, did the requester experience a long wait to obtain the records? Were the copy costs reasonable? Were there additional searching fees? Was the requester sent to several different offices in search of the desired records? Was the requester asked the reason for the request or made to feel intimidated in any way? Did the agency provide FOIA Guidelines or a request form? Was the requester sent to the agency's website?

The audit also measured how faithfully the agency responds to the request for public records. This measure depended largely on how the agency interpreted the "public" nature of the requested records. For example: Are salaries of non-elected city employees "public"? Are student disciplinary reports "public"? Are expense accounts of city managers and school district superintendents "public" or are they "exempt"?

IV. How the Audit was conducted:

The Audit included towns and cities, school districts and all three county governments. It included small towns, mid-sized towns and large cities, rural town and urban cites. Seventeen League volunteer auditors visited thirty-four agencies. They requested public records from the clerk or other designated public employees who were responsible for record keeping. The types of records they requested were carefully pre-screened as meeting the definition of "public" consistent with the Delaware's FOIA). Auditors requested a set of records that were the same for all agencies and another set that related to the types of agencies they were auditing. For example, all agencies were asked to provide the Agenda and Minutes of their most recent Board meetings, e.g., Town Council, School Board or County Council. All agencies were asked for the salary and expense account records of their highest paid non-elected employee and that person's expense account records.

Other records differed by type of agency. Towns and cities were asked for their Budget including any

outside Grants. School districts were asked for records on: Race and Ethnic enrollment, Student testing, Student discipline and Teachers salaries.

The object of this audit exercise was to test how effectively local governments are implementing Delaware's FOIA when ordinary citizen are requesting public records - not how they treat journalists or community activists or lawyers. League volunteers therefore were asked to simulate that "ordinary citizen" reality.

Volunteer auditors asked for two sets of records: 1) those that were readily available and could be obtained during the initial visit and 2) those that might be filed away and would take longer to locate. Auditors were instructed to complete a FOIA Request form if asked to do so, to provide their contact information and ask when they could expect to pick up the records. In some cases they asked to have them mailed to them. If the Clerk told them they could find the records on the agency's website, they were instructed to say they were not comfortable on the computer and preferred to pick up copies of the original records. (Not all ordinary citizens are computer literate.) They were also instructed to ask the copying costs in advance. Volunteer auditors were provided with a reporting form for recording agency responses to their records request.

In rare cases, the entire FOIA request was completed in one visit. Such occasions were usually small towns with a one or two person staff where the records were kept in a single room. In most cases, auditors found it necessary to make follow-up visits and phone calls to the agency in order to complete their audit. In many cases, several phone calls and two or three visits were required to complete the audit process.

V. How aspects of the FOIA law were selected, measured and rated: FOIA Audit responses were assessed and graded on a 100 point scale. Forty points were assigned to procedural adherence to Delaware open-records law; sixty points were assigned to substantive adherence.

A. The procedural aspects of the Audit included: 1) copying costs, 2) a reason for the records request was asked by the clerk, 3) records were in original format, 4) time frame, 5) user friendly, 6) number of return visits and phone calls, 7) sent to several other offices, and 8) attitude. Points were assigned to each of these procedural aspects. (#1-#4 counted as 10 points each (40 points) toward the total grade.)

The original open-records provisions of Delaware's FOIA established a basic foundation for public access to public records. Over the years there have been amendments, court decisions and opinions from Attorneys General's opinions that have clarified and implemented the process that informs both the requester and the records providers. 1) where the law says copying costs should be "reasonable", the AG has suggested \$.50 per page is reasonable, 2) the AG has established the requester need not give her name, her association or the reason for the request, 3) the requester has a right to receive the public record in the original format in which the record was recorded. A requester, therefore, has the right to receive the actual record, not an image from a website or a handwritten response in lieu of the actual record.

The Attorneys General has suggested that 10 days is a reasonable standard for an agency to respond to a FOIA request for public records. This Audit applied the following measure: "good" = 1-10 business days, "satisfying" = 11-20 business days and "discouraging" = over 21 business days.

B. The substantive aspects of the law included public records that clearly meet the standard of “public” as defined in Delaware’s open-records law. Towns, cities, counties were asked for their: Agenda, Minutes, salary record and expense account records of the highest paid non-elected official. In addition, towns, cities and counties were asked for their Budgets any outside Grants for 10 points each. Total 60 points.

School districts were asked for their: Agenda, Minutes, salary record and expense account records of the highest paid non-elected official for 10 points each for 40 points. In addition, school districts were asked for 1) Enrollment by Race/Ethnicity, 2) DSTP (Delaware Student Test Performance), 3) Student Disciplinary records and 4) Teacher Salaries Schedule records- for 5 points each. Total 60 points.

An additional 40 points were assigned for: charging a reasonable copying fee for copying records, timely responses, records in proper format and avoiding questioning the reason for records request. On a 100 point scale, each agency’s transparency ratings are displayed in the (attached) “Weather Report”: 90-100 = Sunshine, 80-89 = Partly Cloudy, 70-79 = Cloudy, 60- 69= Twilight, 50-59 = Midnight. The overall composite profile of Delaware’s municipalities and cities are displayed in the attached charts: “Records Survey Results and “Process Survey Results.”

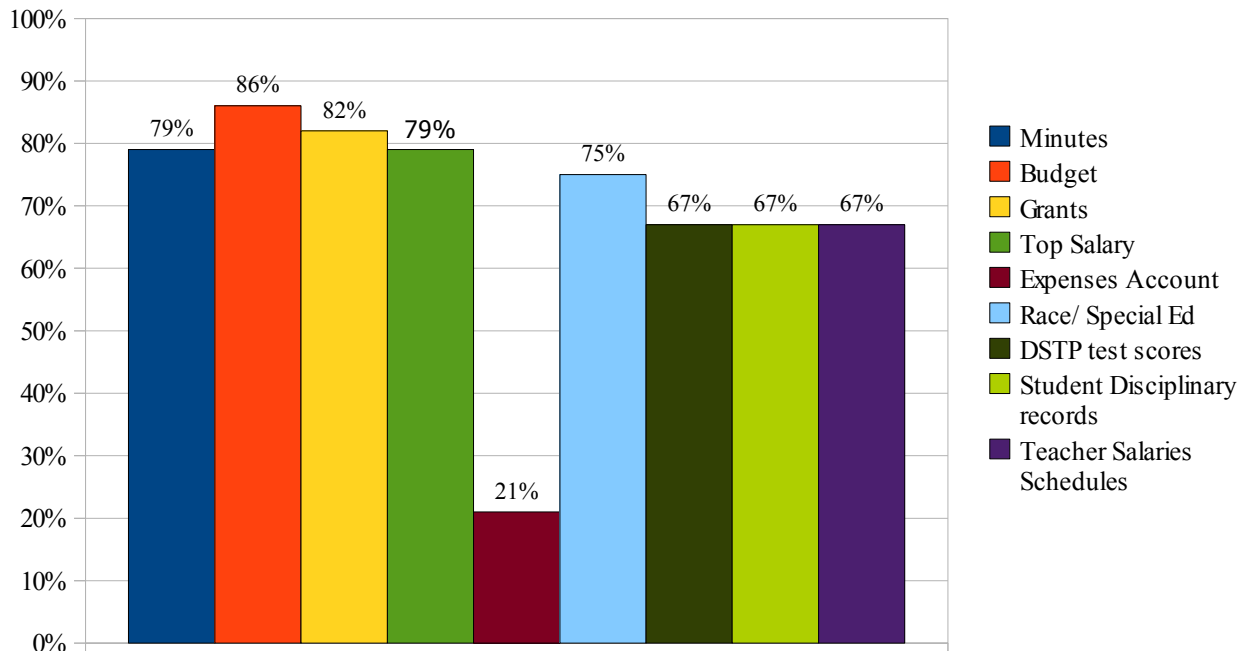
Summary Findings:

As a group, municipalities and counties were more forthcoming in providing records than were school districts. Small towns were more transparent than were cities and counties. Records that are generally posted on agency websites (agenda and minutes) were more often provided than were Budgets and Grants. Financial records (salaries of individuals and expense accounts) were seldom provided. The user-friendly interface between the League auditor and the agency record-keeper varied widely from one agency to another. School districts were more centralized- often two visits were sufficient. City records were often scattered among various departments and offices, thus requiring multiple revisits. Copying costs for records generally were within the “reasonable” price range. The time-frame for providing records varied from: same day, a few days to a month.

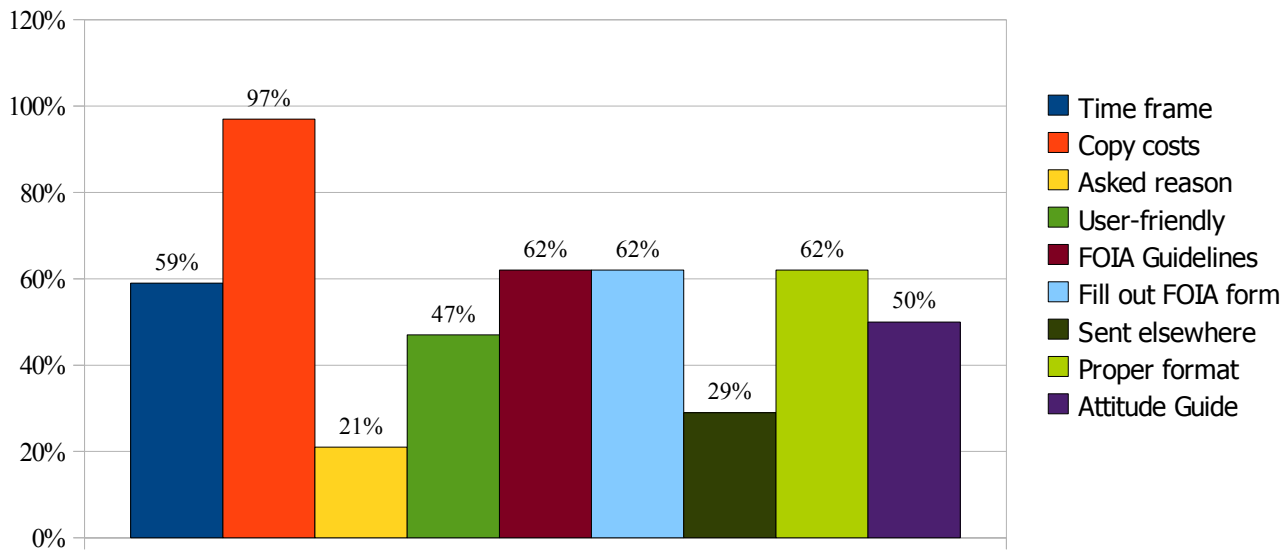
For a full review of this Audit and information about other FOIA Audits, go to the LWV DE website: <http://de.lwv.org/>.

Margaret McKay, Ph.D., Chair
LWV DE FOIA Project

RECORDS INDICATOR








PROCESS INDICATOR






SUSSEX COUNTY

Municipalities










LEWES		Sunshine
MILFORD		Partly cloudy
MILLSBORO		Twilight
MILTON		Partly cloudy
SEAFORD		Sunshine

School Districts






MILFORD SCHOOL DISTRICT		Sunshine
INDIAN RIVER DISTRICT		Cloudy
SEAFORD SCHOOL DISTRICT		Partly cloudy

KENT COUNTY

Municipalities

CAMDEN		Cloudy
CHESWOLD		Sunshine
CLAYTON		Partly cloudy
DOVER		Sunshine
FELTON		Sunshine
FREDERICA		Sunshine
HARRINGTON		Sunshine
SMYRNA		Partly cloudy
WYOMING		Sunshine

School Districts

CAESAR RODNEY		Twilight
CAPITAL		Partly cloudy
SMYRNA		Sunshine
LAKE FOREST		Sunshine
POLYTECH		Partly cloudy

County

KENT CO		Partly cloudy
---------	---	---------------

NEW CASTLE COUNTY

Municipalities

BELLFONTE		Midnight
DELAWARE CITY		Midnight
NEWPORT		Partly cloudy
NEWARK		Sunshine
WILMINGTON		Partly cloudy

School Districts

BRANDYWINE		Partly cloudy
COLONIAL		Midnight
VO TECH		Midnight
RED CLAY		Midnight

County

N C COUNTY		Partly cloudy
------------	---	---------------