

# **DELAWARE PUBLIC RECORDS LAW**

## **(29 Del. Code, Chapter 5)**

### **§ 501. Statement of legislative intent; short title.**

(a) The General Assembly finds that public records are essential to the administration of state and local government. Public records contain information which allows government programs to function, provide officials with a basis for making decisions and ensure continuity with past operations. Public records document the legal responsibility of government, protect the rights of citizens and provide citizens with a means of monitoring government programs and measuring the performance of public officials. State and local government records also reflect the historical development of the government and of the citizens which it serves. Such records need to be systematically managed to ensure preservation of historically valuable materials, to provide ready access to vital information and to promote the efficient and economical operation of government.

(b) The General Assembly intends by this subchapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the State.

(c) The Delaware Public Archives is established as a division within the Department of State and is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law as defined in this subchapter.

(d) The Delaware Public Archives shall be the official repository for the archival records of this State and all political subdivisions thereof.

(e) This subchapter may be cited as the "Delaware Public Records Law."

### **§ 502. Definitions.**

As used in this subchapter, the following terms shall have the meanings indicated:

(1) "Public record" means any document, book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics, including electronic records created or maintained in electronic information systems, made, used, produced, composed, drafted or otherwise compiled or collected or received in connection with the transaction of public business or in any way related to public purposes by any officer or employee of this State or any political subdivision thereof.

(2) "Electronic record" means a public record that is stored, generated, received or communicated by electronic means for use by, or storage in, an information system or for transmission from one information system to another.

(3) "Political subdivision" includes counties, cities, towns, districts, authorities and other public corporations and entities whether mandated by the Constitution or formed by an act of the General Assembly.

(4) "Local government" means any county, city, town, municipality or other government, created by an act of the General Assembly, that is not a state agency, department, board or commission.

(5) "Governing body" means the county council, levy court, city or town council, board or commission or other body authorized by law to govern the affairs of local government.

(6) "Agency" means any office, department, board, commission or other separate unit of government of this State, including all branches of government: Executive, legislative and judicial.

(7) "Records retention and disposition schedule" means a list or other instrument describing records and their minimum retention periods which is issued by the Delaware Public Archives.

(8) "Records officer" means any person or persons designated according to the provisions of this chapter, whose responsibilities include the development and oversight of agency or local government records management programs.

(9) "Archival record" means those records that contain significant information about the past or present or provide significant evidence of the organization, policies, procedures, decisions and essential transactions of public business and are therefore worthy of long-term preservation and systematic management for historical and other research.

(10) "Vital records" means those records which contain information required for government to continue functioning during a disaster, protect the rights of Delaware citizens and document the obligations of Delaware government, and reestablish operations after a calamity has ended.

(11) "Custodian of public records" means the person designated, pursuant to § 520 of this title, or who is otherwise responsible for the creation or maintenance of public records.

### **§ 503. Duties of Delaware Public Archives concerning public records.**

(a) The Delaware Public Archives shall be responsible for establishing and enforcing the policies and guidelines for the management and preservation of all public records of this State and the political subdivisions thereof.

(b) The Delaware Public Archives shall have the power, duty and authority to:

(1) Establish and administer an archives and records management program for the application of efficient and economical methods to the creation, utilization, maintenance, retention, preservation and disposal of public records.

(2) Analyze, develop, establish and coordinate standards, procedures and techniques of recordmaking and recordkeeping.

(3) Preserve and administer in the Delaware Public Archives such records as may be transferred into its custody, carefully protecting such materials, and filing, classifying and cataloguing them for use. Provided, that any materials placed in the keeping of the Delaware Public Archives under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.

(4) Initiate appropriate action to recover records removed unlawfully or without authorization.

(5) Establish a centralized micrographics and document imaging program for the benefit of all agencies, at the full cost of such goods and services, in accordance with § 6531 of this title.

(6) Institute and maintain a training and information program in records and information management to bring approved and current practices, methods, procedures and devices for the efficient and economical management of records to the attention of all agencies and political subdivisions.

(7) Establish and maintain a program in cooperation with state agencies and the political subdivisions of this State for the selection and preservation of vital records, or those records which are considered essential to the continuing operation of government and to the protection of the rights and privileges of citizens.

(8) Promulgate such rules and regulations as may be necessary to carry out the purposes of this chapter.

(9) Adopt a seal of office for the purpose of certifying copies of public records.

**§ 504. Duties of public officials and employees concerning public records.**

(a) It shall be the responsibility of every public official and employee to:

(1) Adequately document the transaction of public business and the services and programs for which such persons are responsible;

(2) Retain and adequately protect all public records in their custody; and

(3) Cooperate with the Delaware Public Archives and records officers in the establishment and maintenance of an active and continuous program for the economical and efficient management of public records.

(b) No officer, member or employee of any agency of this State or any political subdivision thereof shall destroy, sell or otherwise dispose of any public record or printed public document in such person's care or custody or under such person's control without first having advised the Delaware Public Archives of their nature and obtained its consent.

**§ 505. Storage and protection of public records.**

(a) All public records of this State and the political subdivisions thereof shall be kept in facilities maintained by the agencies and offices responsible for the creation and maintenance of such records, unless the consent of the Delaware Public Archives is obtained for their transfer or storage elsewhere.

(b) The chief administrative officer responsible for maintaining an office or offices wherein public records are created or kept shall establish such safeguards against damage, removal or loss of records as the chief administrative officer shall deem necessary and as may be required by rules and regulations issued under authority of this chapter. Such safeguards shall include but are not limited to notifying all officials and employees of the requirements and penalties of this chapter.

**§ 506. Delivery of records to successors.**

The custodian of any public records shall, at the expiration of the custodian's term of office, appointment or employment, deliver custody and control of all public records kept or received by the custodian in the transaction of official business to the custodian's successor, supervisor or records officer, or, if there be none, to the Delaware Public Archives.

**§ 507. Preservation of plans of state buildings and public works.**

(a) Complete copies of as-built drawings and specifications for all buildings and other public works that are built on state property, including alterations thereto, shall be deposited with the Delaware Public Archives for preservation and safekeeping.

(b) The Office of Management and Budget shall not approve final payment for any construction project until permanent archival-quality copies of the architectural and engineering drawings have been deposited with the Delaware Public Archives.

**§ 508. Deposit of deeds to state-owned property with the Delaware Public Archives.**

All state agencies shall deposit with the Delaware Public Archives for preservation and safekeeping the original deeds to all state-owned property. The Delaware Public Archives shall give a receipt for each deed received into its custody.

**§ 509. Duty of public officials to consult Delaware Public Archives before duplicating or repairing records.**

All public officials of this State and the political subdivisions thereof shall consult with the Department of State regarding proper methods and materials before undertaking the repair or restoration of any public record.

**§ 510. Transfer of records upon termination of state agencies; political subdivisions.**

(a) All public records which are in or shall come into the possession of any state agency shall, upon termination of such agency, be transferred to the custody of the Delaware Public Archives, provided that such transfer is consistent with the provision of any such termination.

(b) All public records which are in or shall come into the possession of any political subdivision of this State shall, upon termination or revocation of the charter of such political subdivision, be transferred to the custody of the Delaware Public Archives.

**§ 511. Certified copies of records delivered to Delaware Public Archives for preservation.**

(a) The Delaware Public Archives may issue certified copies of any public records in its custody, as provided by § 10003 of this title, subject to the restrictions listed in § 10002 of this title, which certified copies shall be admissible in evidence in any court of justice or administrative hearing in the same manner and entitled to the same weight and have the same effect as certified copies made by the official from whose office such records were received.

(b) The State Archivist and Records Administrator, or in his or her absence the Deputy State Archivist, may certify copies of any public records in the custody of the Delaware Public Archives under seal of the Delaware Public Archives.

**§ 512. Transfer of records to the Delaware Public Archives.**

(a) Selection and transfer of public records in the custody of any public official of this State or the political subdivisions thereof shall be based upon terms and conditions established in approved records retention and disposition schedules, and according to the rules and regulations established pursuant to the provisions of this chapter.

(b) The Delaware Public Archives shall provide written notice a minimum of 10 working days prior to such transfers, unless there is immediate, actual or threatened damage, loss or destruction of public records, in which case, such transfer may be without notice.

**§ 513. Acquisition and custody of federal records.**

The Delaware Public Archives may acquire and take into its protective custody such public records in the custody of the government of the United States as may relate to the State.

**§ 514. Inspection of public records by the Delaware Public Archives.**

For the purpose of this chapter all custodians of public records of this State and the political subdivisions thereof shall, upon the request of the State Archivist and Records Administrator, afford to the State Archivist and Records Administrator or Delaware Public Archives staff designated by the Archivist all proper and reasonable access to and examination of all public records in their custody.

**§ 515. Microfilming and other document imaging services; appropriations and expenditures.**

(a) Any program or function of any state agency or local government, which requires microfilm or other document imaging services, must include provisions for the anticipated cost of such services. Agencies may choose to contract with the Delaware Public Archives for microfilm and document imaging services in accordance with the provisions of § 6531 of this title.

(b) The Department of Finance shall not approve expenditure of funds used for the development, implementation or maintenance of microfilm or document imaging programs, including contracting with a commercial service provider or purchase of equipment or software, without prior written approval of the Delaware Public Archives. Any programs or projects in operation must adhere to standards established by the Delaware Public Archives to allow for approval of expenditures.

**§ 516. Responsibility of the Delaware Public Archives concerning records created or reproduced by photographic or microphotographic means; admissibility of photographic copies of records in evidence.**

(a) The Delaware Public Archives shall be responsible for monitoring the use of photographic or microphotographic processes in the creation or duplication of public records.

(1) The Delaware Public Archives shall enforce compliance with approved procedures and standards of quality, to be established by the Delaware Public Archives pursuant to the provisions of this chapter, regarding creation and storage of public records by microphotography or other means.

(2) Destruction of original records which have been duplicated shall require the prior approval of the Delaware Public Archives.

(b) Photographs, photocopies or microfilm of any record photographed, photocopied or microfilmed as provided in this chapter shall have the same force and effect as the originals thereof would have had and shall be treated as originals for the purpose of their admissibility in evidence. Certified or authenticated copies of such photographs, photocopies or microfilm or enlargements thereof shall be admitted in evidence equally with the original photographs, photocopies or microfilm.

**§ 517. Standards for methods and materials used for public records.**

(a) All custodians of public records of this State and the political subdivisions thereof, whose duty it shall be to create any public record, shall not use or permit to be used for recording purposes, any materials or methods which do not meet standards of quality established by the Delaware Public Archives.

(b) The Delaware Public Archives may require that certain records shall be kept on permanent-durable paper. The Delaware Public Archives may require the microfilming of records that are not produced on permanent-durable paper.

(c) The Delaware Public Archives shall make available, upon request, its standards of quality for methods and materials.

**§ 518. Recovery of records; replevin.**

(a) The chief administrative officer of each state agency and political subdivision of this State shall notify the Delaware Public Archives of any actual, impending or threatened unlawful removal, defacing, alteration or destruction of records that shall come to his or her attention, and with the assistance of the Delaware Public Archives shall initiate action through the Attorney General for recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.

(b) Upon the request of the State Archivist and Records Administrator, the Attorney General shall have the authority to enjoin, recover and replevin any public records which have been unlawfully transferred or removed in violation of this subchapter or otherwise transferred or removed unlawfully through whatever means of equitable relief necessary. Such records shall be returned to the office of origin or to the Delaware Public Archives.

**§ 519. Delaware Public Archives to be depository for reports, publications, rules and regulations.**

(a) The Delaware Public Archives is hereby constituted the central depository for the reports, publications, rules and regulations of the government of this State and all political subdivisions thereof. It shall be the duty of all state agencies and political subdivisions of this State to deposit with the Delaware Public Archives 2 copies of the best edition of all reports and publications issued for general public distribution. Said deposit shall also include 2 complete and current sets of respective rules and regulations and any changes as they occur.

(b) The Delaware Public Archives shall have the authority to determine whether or not any of said publications lack sufficient information for retention as research materials, and it may request the publishing agency to discontinue depositing such publications with the Archives. The Delaware Public Archives may preserve copies of any publications deposited for preservation and may destroy the originals after copies created on a recording medium that meets the standards of quality for methods and materials established under § 517 of this chapter have been

made and preserved.

**§ 520. Custodian designated.**

The chief administrative officer or officers charged by law with the responsibility of maintaining offices having public records shall be the official custodian of such public record. However, upon transfer of any and all public records to the Delaware Public Archives for archival preservation, the State Archivist and Records Administrator shall become the designated custodian.

**§ 521. Appointment of records officers.**

(a) Each state agency and political subdivision of this State shall designate as many as appropriate, but at least 1, records officer to serve as liaison with the Delaware Public Archives for the purpose of implementing and overseeing a records management program, and coordinating legal disposition, including destruction of obsolete records.

(b) Appointment of state agency records officers shall be made by the respective heads of each agency.

(c) Appointment of records officers for the political subdivisions of this State shall be made by the chief administrative official of such political subdivision.

**§ 522. Appointment of State Archivist and Records Administrator; qualifications for position; removal from office.**

(a) The Secretary of State shall appoint with a fixed salary, and with written approval of the Governor, a director for the Delaware Public Archives who shall have the title (State Archivist and Records Administrator) who shall be qualified by training and experience to perform the duties of the office, and who may be removed from office by the Secretary with written approval of the Governor.

(b) The State Archivist and Records Administrator shall have such powers, duties and functions in the administration and operation of the Delaware Public Archives and implementation of the Delaware Public Records Law as may be assigned by the Secretary or required by the Delaware Public Records Law.

**§ 523. Council on Archives.**

(a) There is hereby established the Council on Archives.

(b) The Council on Archives shall serve in an advisory capacity to the Department and shall consider matters relating to archives and archival standards throughout the State and such other matters as may be referred to it by the Governor, the Secretary of the Department or the General Assembly. The Council on Archives may study, research, plan and make advisory

recommendations to the Governor, the Secretary of the Department or the General Assembly on matters it deems appropriate to provide the best possible archival service in Delaware.

(c) The Council on Archives shall serve as the state historical records advisory board for the purposes of satisfying regulations established by the National Historical Publications and Records Commission of the National Archives. The Council on Archives will complete all activities required by the National Historical Publications and Records Commission for the State Historical Records Advisory Board.

(d) The Council on Archives shall be composed of 12 members, all of whom shall be appointed by the Governor. Four members shall be appointed for a term of 1 year, 4 members shall be appointed for a term of 2 years, and 4 members shall be appointed for a term of 3 years; and after the initial appointments, all terms shall be for 3 years. No member shall be appointed for more than 2 consecutive terms. The Director of the Delaware Public Archives shall serve as the Chairperson of the Council on Archives.

(e) Members of the Council on Archives shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties.

(f) A vacancy prior to the expiration of the term of a member of the Council on Archives shall be filled for the remainder of the term.

#### **§ 524. Records retention and disposition schedules.**

The Delaware Public Archives shall, after consultation with appropriate state agencies, or political subdivisions of this State, establish records retention and disposition schedules setting forth the minimum length of time that records need to be retained. If any state or federal law or regulation provides a retention period different from that established by the records retention period and disposition schedule established herein, the retention period established by law or regulation shall govern.

#### **§ 525. Local Government Records Management Improvement Fund.**

(a) There is hereby established a special fund to be known as the Delaware Local Government Records Management Improvement Fund. Such fund shall consist of revenues derived from the imposition of the additional fee authorized pursuant to § 9607 of Title 9.

(b) Use of these funds shall be restricted solely to the development and ongoing maintenance of a full-time local government records management program component within the Delaware Public Archives program. Such program shall be responsible for providing aid, advice, and assistance to all local governments of this State concerning the proper management and preservation of the public records in their custody or care, as required by other provisions of this subchapter. Funds shall be expended to support administrative and other costs associated with the provision of consultative and technical services including, but not limited to, educational programming, micrographics and digital imaging services, and ongoing storage and preservation of those local

government records which have been transferred into the custody of the Delaware Public Archives pursuant to other provisions of this subchapter.

(c) All fees received by the State Treasurer and other moneys appropriated or received for the purposes stated in subsection (b) of this section shall be deposited in an appropriated special fund which shall be administered by the Delaware Public Archives, under the same type of budget and financial controls as the General Fund of this State.

**§ 526. Penalties.**

Whoever violates § 504, 506, 507, 508, 509, 512, 514, 517, and 519 of this title shall be guilty of an unclassified misdemeanor and shall be fined not more than \$500, or imprisoned not more than 3 months, or both.