

ORDINANCE NO. 2014-_____

**AN ORDINANCE TO CREATE A NEW CHAPTER OF THE TOWN CODE
REGARDING FEES AND COSTS RELATED TO THE
FREEDOM OF INFORMATION ACT.**

WHEREAS, the Town Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, title 29, section 10003(f)(1) of the Delaware Code, a section of the State's Freedom of Information Act (hereinafter "FOIA"), requires each public body to designate a FOIA coordinator who shall serve as the point of contact for FOIA requests and coordinate the public body's responses thereto; and

WHEREAS, title 29, section 10003(l) of the Delaware Code sets forth a schedule of fees that apply to FOIA requests unless otherwise set forth in the Delaware Code or any applicable code of a county or municipal public body;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following new Chapter hereby is incorporated into the Town Code in its appropriate numerical place as follows:

FEES AND COSTS RELATED TO FREEDOM OF INFORMATION ACT REQUESTS

§ 1. Purpose.

This Chapter identifies the fees charged by the Town in responding to a request under the Freedom of Information Act. All applicable charges identified herein shall be paid unless waived by the Town.

§ 2. Format and Costs of Copies.

- A.** Photocopying fees. -- In instances in which paper records are provided to the requesting party, photocopying fees shall be as follows:
1. Standard-sized, black and white copies: The first 20 pages of standard-sized, black and white copies material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.10 per sheet (\$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5"/" x 11"/", 8.5"/" x 14"/", and 11"/" x 17"/".
 - ~~2. Oversized copies/printouts: The charge for copying oversized public records shall be as follows: 18"/" x 22"/", \$2.00 per sheet; 24"/" x 36"/", \$3.00 per sheet; documents larger than 24"/" x 36"/", \$1.00 per square foot.~~
 2. Oversized copies/printouts: The Town is unable to copy oversized public records for the following sizes: 18"/" x 22"/", 24"/" x 36"/", and documents larger than 24"/" x 36"/". The charge will be equal to the cost incurred by the Town.

3. Color copies/printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard-sized copies (8.5/" x 11/", 8.5/" x 14/", and 11/" x 17/") ~~and \$1.50 per sheet for larger copies.~~

§ 3. Administrative Fees.

- A. Administrative fees. -- Administrative fees shall be levied for requests requiring more than 1 hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the public body's legal review of whether any portion of the requested records is exempt from FOIA. The public body shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonable required to process FOIA requests. In connection therewith, the public body shall minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.
- B. Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.
- C. Administrative fees will be billed to the requesting party per quarter hour. These charges will be billed at the current hourly pay grade (prorated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this section for copying fees.
- D. When multiple FOIA requests are submitted by or on behalf of the requesting party in an effort to avoid incurring administrative charges, the public body may in its discretion aggregate staff time for all such requests when computing fees hereunder. Notwithstanding the foregoing, any Freedom of Information Act policy adopted by a public body pursuant to subsection (b) of this section hereunder may include provisions for the waiver of some or all of the above administrative fees; provided that such waiver shall apply equally to a particular class of persons (i.e., nonprofit organizations).

§ 4. Microfilm and/or Microfiche Printouts.

- A. Microfilm and/or microfiche printouts. -- The first 20 pages of standard-sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

§ 5. Electronically Generated Records.

- A. 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.

§ 6. Other Costs.

- A. Any other actual costs associated with fulfilling a request for information, such as postage, shall be at the expense of the requestor. If the Town does not have the resources or equipment to duplicate requested records, the Town, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the requestor will be liable for payment of these costs.

The requester shall be provided an estimate of the costs involved to fulfill their request for information. In providing access to public records, the FOIA Coordinator may take necessary and reasonable action to protect the Town's public records and to prevent excessive and unreasonable interference with the discharge of the Town's functions. This does not require the Town to make a compilation, summary or report of information.

§ 7. Payment.

- A. Payment for copies and administrative charges will be due at the time copies are released to the requestor. The Town reserves the right to refuse to make copies for requestors who have outstanding Freedom of Information Act request balances.
- B. Notwithstanding the foregoing subsection 6. A., the Town may require pre-payment of copying and administrative charges prior to mailing copies of requested records.
- C. A deposit must be provided in advance for those requests for which the fees the FOIA Coordinator estimated to be over \$50.00. The deposit shall be one-half (½) of the total estimated fee.
- D. The fee must be received before copies are delivered or before searching and reviewing commences, if a deposit is required.

§ 8. FOIA Coordinator designation.

The FOIA Coordinator for the Town of Milton shall be the Town Manager or the Town Manager's designee. The Town website shall indicate the name of the FOIA Coordinator, in compliance with title 29, section 10003 of the Delaware Code, unless otherwise amended.

SYNOPSIS

This Ordinance implements fees associated with the Town's response to Freedom of Information Act requests, pursuant to title 29, chapter 10003 of the Delaware Code. This Ordinance codifies much of the Town's prior policy on Freedom of Information Act requests.

I, MARION L. JONES, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton

at its meeting held on the _____ day of _____, **2014**, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR