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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**  
**Attorney General Opinion No. 16-IB06**

March 14, 2016

**VIA EMAIL AND US MAIL**

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*Attorneys for the Petitioners Chipman L. Flowers, Jr.*  
*And the Archives of the Honorable Chip Flowers, Jr.*

**Re: FOIA Petition Dated September 11, 2015**

Dear Counsel:

We write in response to the petition submitted on behalf of Chipman L. Flowers, Jr. and The Archives of the Honorable Chip Flowers, Jr. (“the Petitioners”). The petition alleges that the Office of the Governor of the State of Delaware (the “Governor’s Office” or the “Office”) violated the Delaware Freedom of Information Act, 29 *Del. C.* § 10001-10007 (“FOIA” or “the Act”) in connection with its handling of your clients’ request for public records. This is our determination whether access to the requested records was properly denied.

For the reasons set forth below, we conclude that the Governor’s Office did not violate FOIA when it withheld documents protected “by statute or common law” pursuant to 29 *Del. C.* § 10002(1)(6) (“Exemption 6”).

We are unable to determine whether the Governor’s Office violated FOIA when it withheld documents pursuant to 29 *Del. C.* § 10002(1)(16) (“Exemption 16”). It appears that the Governor’s Office might have withheld some email records solely on the basis that a member of the General Assembly or its staff sent or received an email, and without regard to the content or context of the email. The Governor’s Office has not persuaded us that doing so is proper. But, the precise scope

of Exemption 16 is unclear, so we ask the Governor's Office to review any emails withheld solely on the basis of Exemption 16 in light of the discussion below and, if it continues to withhold the emails, to explain the basis for doing so to the Petitioners. If the Petitioners should wish to challenge any argument the Governor's Office may present, the Petitioners may file another petition with this office.

We respectfully note that the General Assembly could clarify the contours of Exemption 16 by amending the statute, and we believe that requesting parties and public bodies alike would benefit from such clarification.

## **I. RELEVANT FACTS**

On March 16, 2015, The Archives of the Honorable Chip Flowers, Jr. ("the Archives") submitted a FOIA request ("the Request") to the Governor's Office, seeking:

All non-privileged emails from or received by Governor Markell, Sean Barney, Mike Barlow, Secretary of State Jeff Bullock, and Secretary of State Tom Cook that specifically referenc[e] former State Treasurer Chip Flowers, Ms. Ericka Benner, the Cash Management Policy Board, and certain members thereof.

Petition at ¶ 8. The Governor's Office informed the Archives that the Request would take more than the statutorily-allotted fifteen days to fulfill because the "request is for voluminous records, requires legal advice, and includes records that are in storage or are archived . . . ." *See* Petition at Ex. 1 (Letter from A. Lippstone to [the Archives], c/o K. Council dated April 6, 2015).

On or about July 15, 2015, the Governor's Office provided responsive public records to the Archives. *See* Petition at Ex. 2 (Letter from D. Blount to [the Archives], c/o K. Council dated July 15, 2015). The cover letter accompanying the records stated, in part:

Please be advised that certain documents that fall outside of "public records," as that term is defined under FOIA, including records specifically exempted from public disclosure by statute or common law, have been redacted or otherwise not included in this response. 29 Del. C. § 10002(1)(6); emails received or sent by members of the Delaware General Assembly or their staff 29 Del. C. § 10002(1)(16).

*Id.*

On August 4, 2015, Keysha N. Council, Esq., on behalf of the Archives, wrote to the Governor's Office, noting that it had "asserted privilege with respect to certain emails" and requested "the Privilege Log associated with the FOIA request . . . ." Ms. Council also noted that private counsel had been retained to assist in the matter. *See* Petition at Ex. 4 (email from K. Council to D. Blount dated August 4, 2015).

The next day, the Governor's Office responded to Ms. Council, stating that it had no obligation to provide a privilege log under FOIA. In addition, the Office repeated, nearly verbatim, the excerpted language from the July 15, 2015 letter. *See id.* (Email from D. Blount to K. Council dated August 5, 2015). The Office did not identify, nor did the Archives appear to have asked the Office to identify, what "statute or common law" the Office relied upon to withhold records pursuant to 29 *Del. C.* § 10002(1)(6).

The Petitioners filed a complaint with the Attorney General's Office on September 11, 2015 ("the Petition"), requesting "a full investigation as to whether the Office of the Governor has complied with its obligations under FOIA with respect to the Request." Petition at ¶ 18. The Petitioners rely almost exclusively upon two emails already in their possession and not also produced by the Governor's Office -- the "8:54 AM email" and the "6:16 PM email" (collectively, "the Sample Emails") -- as evidence that the Governor's Office violated FOIA in connection with their Request.

The Governor's Office responded to the Petition on October 5, 2015 ("the Response").

## II. SUMMARY OF ARGUMENTS

The Petitioners present two arguments and a request for relief that implies a third. First, the Petitioners contend that the Governor's Office invoked Exemption 6 to withhold documents on the basis of the attorney-client privilege. *Id.* at ¶ 15 ("Presumably, the Office of the Governor claims this exemption based on the attorney-client privilege."). The Petitioners contend that it is clear from the face of the Sample Emails that Exemption 6 has been invoked improperly, because the two emails are clearly not covered by the attorney-client privilege.<sup>1</sup> *Id.*

Second, the Petitioners contend that the Governor's Office has improperly withheld documents under Exemption 16 because, under the Petitioners' interpretation of the exemption, the Sample Emails would not be covered. *Id.* at ¶ 16 ("Second, the exemption for emails received or sent by members of the Delaware General Assembly or their staff under [Exemption 16] does not apply to either communication.").

In connection with its requested relief, the Petitioners implicitly contend that the effect of the Office's decision to decline to provide a privilege log in this matter is to allow this office to commence an investigation and explore whether the Governor's Office committed any FOIA violations while fulfilling the Archives' Request. *Id.* at ¶ 18 ("[T]he Requestors respectfully seek a full investigation as to whether the Office of the Governor has complied with its obligations under FOIA with respect to the Request."); *see also id.* at ¶ 1 (characterizing filing as "petitioning the Attorney General to investigate the Office of the Governor's Response for violations of FOIA").

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<sup>1</sup> The record does not indicate whether the Archives presented these emails to the Office before filing the Petition.

In its Response, the Governor’s Office argues: (1) that it did not violate FOIA when it declined to provide a privilege log to the Petitioners, (2) that it properly withheld records pursuant to Exemption 6 under the attorney-client, executive, and draft documents privileges, and (3) that it properly withheld records on the basis of Exemption 16.<sup>2</sup>

### III. APPLICABLE LAW

FOIA defines a “public record” as “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.”<sup>3</sup> Pursuant to 29 *Del. C.* § 10003(a), “[a]ll public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate body.”

FOIA provides that certain records are not “public records” and need not be provided in response to a FOIA request. Section 10002(1) provides, in part:

For purposes of this chapter, the following records shall not be deemed public:

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<sup>2</sup> The Governor’s Office also argued that it need not provide any additional records to the Petitioners because they are not citizens of the State of Delaware. It does not appear that the Governor’s Office raised this argument with the Petitioners when responding to the Request.

It is true that the Petition does not allege that either Petitioner is a Delaware citizen, but the Petitioners later submitted a substantive rebuttal to the Response of the Governor’s Office regarding the citizenship argument. *See* Letter from P. Collins to K. Fortune dated October 13, 2016.

To date, there is no decision of this office or ruling from a Delaware court discussing whether a public body may decline to produce public records solely on the basis that the requesting party is not a Delaware citizen. We decline to address the argument here. A requesting party should generally know what a public body will argue when deciding whether to continue to press its FOIA request or to negotiate further and, perhaps, modify a request. That is especially true in this case, where every stage of the process involved Delaware attorneys on both sides of the matter. Accordingly, we decline the Governor’s Office’s invitation to decide this matter on the basis of a legal argument that was never raised with the Petitioners, just as we have declined the Petitioners’ request to undertake an investigation on the basis of arguments that were never raised with the Governor’s Office. *See infra* at Section IV.

<sup>3</sup> 29 *Del. C.* § 10002(1).

(6) Any records specifically exempted from public disclosure by statute or common law;

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(16) Emails received or sent by members of the Delaware General Assembly or their staff;

29 *Del. C.* § 10002(1).

When a public body denies any part of a FOIA request, it must provide reasons for its denial, but it “shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.” 29 *Del. C.* § 10003(h)(2).

FOIA allows those denied access to records to contest the denial, and the statute sets forth procedures for doing so. *See* 29 *Del. C.* § 10005(b), (e). A petitioner contesting the denial of access to records “must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in subsection (e) of this section.” 29 *Del. C.* § 10005(b).

#### IV. ANALYSIS

The Petitioners do not argue that the failure to provide a privilege log constituted a FOIA violation. Nor do they ask that we require the Governor’s Office to provide a privilege log. Indeed, the statute makes clear that the Office was not required to provide such a log.<sup>4</sup>

Instead, the Petitioners argue that *because* the Governor’s Office refused to provide a privilege log, this office may conduct “a full investigation as to whether the Office of the Governor has complied with its obligations under FOIA with respect to the Request.” Petition at ¶ 18. We decline the Petitioners’ invitation.

FOIA established a summary process by which a requesting party may obtain the Attorney General’s review of, among other things, a public body’s decision to withhold records or information. The involvement of the Attorney General’s office was intended to, and does, permit many disputes to be resolved without the need for litigation, which benefits requesting parties, public bodies and the Delaware courts. The mandate for this office is to determine whether the public body has complied with the statute, based primarily upon the materials submitted by the petitioner.<sup>5</sup> The statute does not broadly empower, or require, the Attorney General’s office to

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<sup>4</sup> *See* 29 *Del. C.* § 10003(h)(2).

<sup>5</sup> *See* 29 *Del. C.* § 10005(b). FOIA requires the requesting party to “present a petition and all supporting documentation to the Chief Deputy” for review. *Id.* We typically seek a response from the public body involved, and we sometimes ask follow up questions that will help us make the determination. However, as we have often stated, when acting to fulfill obligations under

commence an investigation to find unidentified violations unsupported by argument, much less suggest that doing so would be appropriate in reaction to a public body's reliance on the express protection provided in Section 10003(h)(2).

Thus, in this matter, we have examined the materials submitted by the parties and the circumstances surrounding the handling of the Request to determine whether the parties have understood and satisfied their statutory obligations.

### **A. Exemption 6**

The Petitioners' first argument is that the Governor's Office improperly withheld documents under Exemption 6. *See 29 Del. C. § 10002(1)(6)*. The basis for the argument is that the two Sample Emails do not satisfy the requirements for application of the attorney-client privilege. On August 4, 2015, and again in the Petition, the Petitioners assumed that the Office's reliance on Exemption 6 was based upon the attorney-client privilege.<sup>6</sup> The record does not indicate that the Petitioners made any attempt to test this assumption through discussion with the Office before filing the Petition.

The Petitioners' argument fails because the Response makes clear that the Petitioners' assumption that the Office's reliance upon Exemption 6 was based upon the attorney-client privilege was incorrect. With its Response, the Office submitted an affidavit of then-Deputy Legal Counsel (now Family Court Commissioner) Danielle Blount, who attested to having personally reviewed the emails responsive to the Archives' Request and determined which emails to withhold. Ms. Blount also attested to the fact that the common law protections she considered in connection with Exemption 6 included not only the attorney-client privilege, but also the executive privilege

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FOIA, the Attorney General's office is not an independent fact-finding body. *See, e.g., Del. Op. Att'y Gen. 15-IB06, n.2* (Aug. 19, 2015) ("Because of the fact-specific questions raised in the Petition, we briefly summarize our understanding of the relevant facts. Please note that we do not, in the context of evaluating petitions for determination under FOIA, operate as an independent fact-finding body.").

<sup>6</sup> Compare Petition at Ex. 2 (Letter from D. Blount to [the Archives], c/o K. Council dated July 15, 2015) (citing Exemption 6) with Petition at Ex. 4 (email from K. Council to D. Blount dated August 4, 2015) ("We understand that the Governor's Office has asserted privilege with respect to certain emails....") and *id.* at ¶ 15 ("Presumably, the Office of the Governor claims this exemption based on the attorney-client privilege.").

and the privilege for draft documents.<sup>7</sup> These are protections that have been recognized in other circumstances,<sup>8</sup> and the Petitioners did not contest their application in their October 13 letter, where they did assert substantive arguments in opposition to one of the Governor’s Office’s other arguments.<sup>9</sup>

### **Exemption 16**

The Petitioners’ second argument is that the Governor’s Office improperly withheld documents under Exemption 16. *See 29 Del. C. § 10002(l)(16)*. In support, the Petitioners argue that “[n]either the recipient nor the sender of the 8:54 AM email was a member or staff of the Delaware General Assembly” and, “[f]or the 6:16 PM email, only one recipient,” who was copied on the email, “could possibly qualify for the exemption.” Petition at ¶ 16. Moreover, the Petitioners argue that the exemption is “designed to protect the deliberative process of the legislature” and it would be an “absurd result that every communication by a public body would be exempt from disclosure so long as the General Assembly’s appointed representative to that body was copied on the communication.” *Id.* at ¶ 17.

Exemption 16 provides that the following records shall not be deemed public records under FOIA: “Emails received or sent by members of the Delaware General Assembly or their staff.” *29 Del. C. § 10002(l)(16)*. To our knowledge, this exemption has not been interpreted by any Delaware Court or by this office.

The Governor’s Office appears to have interpreted Exemption 16 as broadly as possible, confirming that it withheld “*all* emails that were sent or received by members of the General Assembly or their staff, including the email, referenced in the Petition, on which Michael Morton of the Office of the Controller General was copied.” Response at 6 (emphasis added). In support of its interpretation of Exemption 16, the Governor’s Office states that the exemption is “very broadly worded” and that the Office is “not aware of any case law or Attorney General’s opinion limiting the construction” of the exemption. *Id.* We take these statements to mean, among other things, that the Office may not have considered the content of the withheld emails when making its decisions. We also understand them to mean that the Governor’s Office views Mr. Morton as a member of the General Assembly or its staff.<sup>10</sup>

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<sup>7</sup> *See* Blount Aff. ¶ 5, October 5, 2015.

<sup>8</sup> *See also* *Guy v. Judicial Nominating Comm’n*, 659 A.2d 777, 782-83 (Del. Super. 1995) (executive privilege); *Del. Op. Att’y. Gen.* 05-IB13 (May 9, 2005) (draft document privilege). Finally, if the two emails were not covered by either of the two additional privileges, it would not mean that Exemption 6 was incorrectly applied, because the emails could have been withheld pursuant to other exemptions.

<sup>9</sup> *See* Letter from P. Collins to K. Fortune dated October 13, 2015.

<sup>10</sup> We express no opinion on this point but note that Petitioners agree. *See* Petition at ¶ 16 (stating “the State Controller General is a member of the General Assembly”).

The text of Exemption 16 does not include the word “all.” Yet, the Governor’s Office appears to construe the plain language of the exemption to mean that all emails may be withheld regardless of context or content. We believe the Office did so in good faith, but it has not convinced us that this interpretation is reasonable.<sup>11</sup> Reading “all” into the statute undermines the fundamental goals of FOIA, which explicitly include allowing citizens to monitor the work of public officials and public bodies.<sup>12</sup>

Our determination is that the Governor’s Office has not carried its burden to establish that records have been properly withheld pursuant to Exemption 16. It is possible that the Office violated FOIA by withholding the records, but on this record, we cannot reach that conclusion. Nevertheless, because the Office did not carry its burden, it must conduct a more thorough review of emails withheld solely pursuant to Exemption 16.

If the Governor’s Office decides not to produce records after its review, the basis for doing so must be provided to the Petitioners.<sup>13</sup> This will likely occasion future discussions between the parties, and perhaps the Petitioners will decide that another petition to this office is required. In order to assist the parties with their future discussions, we discuss the Petitioners’ arguments briefly below.

To repeat, the Petitioners rely on two emails already in their possession to support their arguments. They note that the first, the 8:54 AM Email, was not sent or received by a member of the General Assembly or its staff. On this record, we cannot tell whether this email was withheld pursuant to Exemption 16 or, if so, why.

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<sup>11</sup> See, e.g., *Am. Civil Liberties Union of Delaware v. Danberg*, 2007 WL 901592, at \*3 (Del. Super. Mar. 15, 2007) (“The enumerated statutory exceptions to FOIA . . . pose a barrier to the public’s right to access and are, therefore, narrowly construed.”); *Del. Op. Att’y Gen.* 12-IIB10 (July 27, 2012), 2012 WL 3535600 at \*1-2 (same, and burden of proof rests with the public body seeking to avoid disclosure).

<sup>12</sup> See, e.g., 29 *Del. C.* §§ 10001, 10002(h). We briefly address two additional arguments advanced by the Governor’s Office. First, the Office contends that the Blount Affidavit “certifies that the decision to withhold the documents was proper under FOIA.” Response at 5. That, however, is the determination to be made by this office.

Second, the Governor’s Office relies on the following language in the FY2015 Budget Epilogue to support its argument in favor of its broad interpretation of Exemption 16: “[the Delaware Department of Technology and Information (“DTI”) is] prohibited from accessing or providing a legislator’s emails or phone calls upon the request of another state department or agency, or branch of state government, except pursuant to the consent of the legislator, an Attorney General subpoena or a search warrant or other court order.” We are not convinced that this directive--which arguably applies only to DTI and its interaction with other state agencies--is applicable in the context of FOIA.

<sup>13</sup> See 29 *Del. C.* § 10003(h)(2).

The Petitioners argue that the second email, the 6:16 PM Email, was not “substantively directed at” Mr. Morton and, therefore, “he cannot fairly be characterized as a recipient....” Petition at ¶ 16. The Petitioners argue that Mr. Morton was “simply copied on the email” and “was not otherwise involved in the communication in any way.” *Id.* We note that Mr. Morton’s email address was entered into the “cc:” line, rather than the “To:” line and that the first line of text in the email reads: “Jack, Jeff and Tom....” The Petitioners do not cite any authority or provide any further analysis in support of the argument, nor do they address its implications for the meaning of the word “received,” as that term is used in Exemption 16 and throughout the statute.

We are not persuaded that Mr. Morton did not “receive” the email. “Receive” is ordinarily understood to mean “to come into possession of” or “to be a recipient.”<sup>14</sup> This is the manner in which the term “receive” is used throughout the statute.<sup>15</sup> In the context of email, “receive” is ordinarily understood to mean that the email arrives in the in-box of the addressee (or, perhaps, in another location designated by the addressee) and is available to be viewed.<sup>16</sup> There is nothing in the record to indicate that this email did not arrive in Mr. Morton’s in-box.

Nor are we certain that the email was not “substantively directed at” Mr. Morton. If the author of an email wants someone to be aware of his communication – either the fact that the communication has been made or the content – and he adds an address to the cc: or bcc: line, it is at least arguable that the sender did “substantively” direct his email to the recipient. Short of asking the sender his intention, future readers can at best draw inferences from the facts and circumstances known to them.

We surmise that the concern driving the Petitioners’ argument is the risk of abuse. An unscrupulous person might copy a member of the General Assembly on any email he wishes to shield from future release pursuant to Exemption 16. We share this concern, and we believe the General Assembly would as well. But, we doubt that the best standard for deciding whether to release a legislator’s emails is a reader’s estimation of whether, or the degree to which, the sender “directed” an email to a recipient.

In the alternative, the Petitioners argue that if the 6:16 PM Email was substantively directed at Mr. Morton, it does not fall within Exemption 16 because it was a “communication[] while acting as a member of the Cash Management Policy Board.” Petition at ¶ 17. Stated another way,

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<sup>14</sup> “Received.” Merriam-Webster Online Dictionary. 2016. <http://www.merriam-webster.com/dictionary/receive> (last visited January 5, 2016).

<sup>15</sup> *See, e.g.*, 29 Del. C. § 10002(d) (FOIA Coordinator is the person designated to “receive” the request); 29 Del. C. § 10002(l) (definition of “public record” includes “information ... received”); 29 Del. C. § 10003(g)(3) (FOIA Coordinator shall note the date a public body “received” a request).

<sup>16</sup> In other contexts “received” may mean that the addressee has actually viewed an email, but Petitioners do not argue that this is the sense in which “received” is used in FOIA or that Mr. Morton did not read the email.

the Petitioners believe the communication relates to Mr. Morton's role as a committee member. If this were permissible, the Petitioners argue:

This would lead to the absurd result that every communication by a public body would be exempt from disclosure so long as the General Assembly's appointed representative to that body was copied on the communication.

Petition at ¶ 17. This is not the purpose for which Exemption 16 was designed, the Petitioners argue; rather, the Petitioners contend, Exemption 16 was "designed to protect the deliberative process of the legislature." *Id.* The Petitioners do not explain what they mean by "the deliberative process of the legislature," nor do they offer support for the assertion that Exemption 16 was designed for this purpose. One might reasonably argue that in order to be covered by Exemption 16 an email must at least relate to the General Assembly's primary role of enacting laws.<sup>17</sup> But, we note that the legislative history of the exemption suggests that its purpose is to protect the privacy of constituent communications, which, of course, may concern subjects other than enacting laws.<sup>18</sup> What we can say comfortably at this point is that an overly-broad application of the exemption would run counter to the spirit of Delaware's FOIA and the well-accepted principle that its exemptions are to be narrowly construed,<sup>19</sup> but that there appears to be at least some consensus in the General Assembly that its emails and other communications with constituents should be protected.

Finally, the Petitioners' argument assumes that the email relates to Mr. Morton's role as a committee member and not as a member of the General Assembly or its staff. Perhaps we would reach the same conclusion after reviewing related communications and seeking additional submissions from the parties. But, accepting that there will be times when the capacity in which an individual sends or receives an email will be difficult to discern, or that he will be acting in a dual capacity, it is not clear that the capacity in which a member of the General Assembly or its staff is functioning at the time of sending or receiving an email should be the standard for invoking Exemption 16.

What the Petitioners' arguments have in common, however, is that they depend upon some examination of the *content* of the email and not merely the fact that a sender or recipient is a

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<sup>17</sup> Del. Const. art. II, § 1 (vesting "legislative power" in the General Assembly); Del. Const. schedule, § 19 (enabling the General Assembly to "enact all laws necessary or proper for the carrying out of the provisions [of the Delaware Constitution]").

<sup>18</sup> We also note, however, that there is another exemption that expressly covers the General Assembly's communications with constituents. This exemption, number 19, originated from the same bill as Exemption 16, and the two exemptions were debated together on the House floor. It appears from those debates that the purpose of both amendments was to protect constituent communications. The Representatives recognized that the exemptions might sweep more broadly than desirable in some circumstances, but the principle of protecting constituent communications was deemed important enough to accommodate that fact.

<sup>19</sup> *See Del. Op. Att'y Gen.* 10-IB01 (Jan. 22, 2010).

member of the General Assembly or its staff. This permits a result that is more consistent with FOIA's goal of government accountability. Requiring an examination of the content of an email is also consistent with the only materials that we have uncovered regarding the legislative intent behind Exemption 16.

## V. CONCLUSION

Our decision is a narrow one; we are not persuaded that Exemption 16 permits the Governor's Office to withhold an email solely on the basis that the sender or a recipient is a member of the General Assembly or its staff. It appears that the Governor's Office may have done so with respect to some of the records the Petitioners requested. We ask the Governor's Office to review any emails withheld solely on the basis of Exemption 16, with the understanding that the content or context of the emails is also relevant to the analysis.

Although the scope of Exemption 16 is not clear, this office will support a decision to continue to withhold under Exemption 16 any communication between a member of the General Assembly or its staff (i) with the member's constituent or (ii) reflecting the substance of such communications, regardless of the identity of the sender or recipient(s). If the foregoing information can be redacted from an email chain that also includes responsive material without risk of revealing the identity of any constituent or the content of any constituent communication, then the document itself should be produced after redaction.

Beyond the foregoing, we believe the Governor's Office should have the opportunity to consider the discussion in this letter and whether Exemption 16 permits the retention of emails on any basis other than the protection of constituent communications. The basis for continuing to withhold any of the emails will ultimately have to be disclosed to the Petitioners pursuant to 29 *Del. C.* § 10003(h)(2). If the Petitioners believe it is necessary, they may then file another petition with this office.

The Governor's Office may file an appeal with the Superior Court of the State of Delaware within 60 days of the date of this decision. *See* 29 *Del. C.* § 10005(b).

This decision is directed solely to the parties identified herein. It is based on the facts relevant to this matter. It does not constitute precedent and should not be cited as such by future parties.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Danielle Gibbs", enclosed in a light blue rectangular border.

Danielle Gibbs  
Chief Deputy Attorney General

cc: Meredith Tweedie, Chief Legal Counsel for Governor Jack Markell (by email)  
Michelle Whalen, Deputy Attorney General (by email)