



MATTHEW P. DENN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX: (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX: (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX: (302) 577-6499

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 17-IB11

June 16, 2017

VIA U.S. MAIL & EMAIL

Jim Lee, Editor
Gatehouse Media Delaware
The Dover Post
1196 S. Little Creek Road
Dover, DE 19901
jim.lee@doverpost.com

Re: FOIA Petition Concerning the State Lottery Office

Dear Mr. Lee:

I write in response to your petition, dated November 20, 2015 (“Petition”),¹ wherein you alleged that the Delaware Lottery Office (the “Lottery”) violated Delaware’s Freedom of Information Act (“FOIA”),² in connection with your November 5, 2015 request for records.³ Pursuant to our routine process in responding to petitions for determination under FOIA, this Office invited the Lottery to submit a written response to your Petition. We received the Lottery’s response on February 19, 2016. I have reviewed your Petition, the Lottery’s response and all subsequent correspondence.⁴ While I sincerely regret the delay in issuing this determination, I

¹ I note that you supplemented your Petition on February 4, 2016.


² 29 *Del. C.* §§ 10001-10007.

³ Your request stated: “For the State Lottery Commission: I request the following records from July, August and September, 2015: 1. Total revenue from sales of all Lottery games for each month indicated---broken down by individual games---from each of the state’s licensed lottery retailers; 2. Total payouts from sales of all lottery games for each of the months indicated---broken down by individual games---from each of the state’s licensed lottery retailers”

⁴ I note that this Office requested additional information from the Lottery on multiple occasions and received multiple submissions from you in response to the Lottery’s submissions.

conclude that the Lottery did not violate FOIA in denying your request. Based upon the record, I am satisfied that, in order to fulfill your request, a third-party vendor would be required to engage in computer programming (i.e., “write script”), thereby creating a record that does not already exist.⁵ The law is clear, however, that FOIA does not require a public body – or, in this case, a third-party vendor acting on a public body’s behalf – to engage in such extensive computer programming in order to respond to a FOIA request.⁶ As such, it is my determination that the Lottery did not violate FOIA by denying your request.⁷

Very truly yours,


LaKresha S. Roberts
Chief Deputy Attorney General

cc: Robert W. Willard, Deputy Attorney General (via email)
Julie M. Donoghue, Deputy Attorney General (via email)
Vernon A. Kirk, Director, Delaware State Lottery (via email)
Michelle E. Whalen, Deputy Attorney General (via email)

⁵ See Kirk Aff. ¶¶ 4-6 (demonstrating that the requested reports do not currently exist and a third-party vendor would need to write scripts in order to accomplish the requested reports).

⁶ See *Del. Op. Att’y Gen.* 07-IB19, 2007 WL 4732802, at *4 (Aug. 28, 2007) (“As for the...information you . . . requested, our Office is satisfied that to provide you with such information would require extensive computer programming to create a new public record which FOIA does not require.”); *Del. Op. Att’y Gen.* 04-IB14, 2004 WL 1547683, at *2 (June 28, 2004) (“FOIA does not require an agency to make a summary or compilation of information in public records, or to produce computerized data in a special format requested by a citizen. It is not ‘necessary for a computer operator to create new records through a computer run, i.e., a search of the online database, accomplished by entering the [requesting party’s] search criteria.’ Nor does FOIA obligate an agency to ‘develop a program to accomplish this task for the purpose of complying with [the FOIA] request.’” (quoting *Gabriels v. Curiale*, 628 N.Y.S.2d 882 (App. Div. 1995) (internal citations omitted))).

⁷ Under the circumstances, I need not determine whether the requested information would nonetheless qualify as a “public record” under FOIA. See 29 *Del. C.* § 10002(l) (defining “public record” for purposes of FOIA).