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DEPARTMENT OF JUSTICE
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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion 17-IB14

July 6, 2017

VIA EMAIL

Dr. Brian Simbirski, MA, PhD
Senior Consultant
Niagara Consulting
brian@niagaraconsulting.net

RE: June 23, 2017 Correspondence Regarding New Castle County

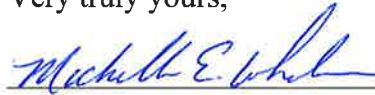
Dear Mr. Simbirski:

We write in response to your correspondence, received on June 23, 2017, alleging that New Castle County (the "County") violated the public records provisions of Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). Specifically, you allege that the County violated FOIA by denying your request on the basis that you are not a citizen of the State of Delaware. As this Office has previously determined, Delaware's FOIA does not prohibit a public body from denying a FOIA request on the basis that the requesting party is not a Delaware citizen.¹ As you have said nothing to contradict the County's suggestion that you are not a Delaware citizen,

¹ See *Del. Op. Att'y Gen.* 16-IB20, 2016 WL 5888776, at *1 (Sept. 30, 2016) ("Our determination is that public bodies are only *required* to comply with FOIA when the requesting party is a citizen of the State of Delaware. In all other cases, public bodies *may, and are encouraged to*, fulfill FOIA requests. Because compliance with Delaware's FOIA is mandatory only with respect to citizens of the State of Delaware, we conclude that [the Office of the Delaware State Banking Commissioner] did not violate FOIA when it denied your . . . request for records on the basis that you are not a Delaware citizen.").

we deem this to be an uncontroverted fact.² As such, it is our determination that the County did not violate FOIA by denying your request.³

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

APPROVED BY:



Ilona Kirshon, Deputy State Solicitor

cc: Karen V. Sullivan, Esq., County Solicitor (via email)

² See *id* at *5 (public body inferred from return address that requesting party was not a Delaware citizen and requesting party said nothing to the public body or to this office to contradict the inference).

³ While we have decided to issue a determination here as a courtesy, we feel compelled to note that you appear to lack standing to avail yourself to the enforcement provisions contained in 29 *Del. C.* § 10005, including the petition process set forth in Section 10005(e).