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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 17-IB35

July 31, 2017

VIA EMAIL

Randall Chase
rchase@ap.org

RE: March 8, 2017 FOIA Correspondence Regarding the Office of the Governor

Dear Mr. Chase:

We write in response to your correspondence, received on March 8, 2017, challenging the Office of the Governor (“OGov”)’s “wholesale denial” of your January 30, 2017 Freedom of Information Act (“FOIA”) request for records. We treat your correspondence as a petition for a determination (“Petition”) of whether OGov violated FOIA in connection with your request.

On January 30, 2017, you sent a FOIA request to OGov for “copies of Gov. John Carney’s appointments and meetings calendars for Jan. 17, 2017 to the present.”¹ OGov provided a response to your request on February 14, 2017 in the form of a letter which included as an attachment a printout of the relevant time period from “The Governor’s Public Schedule,” which can be found here: <http://governor.delaware.gov/the-governors-public-schedule/>.² OGov indicated that certain information had been “redacted” from the Governor’s calendar pursuant to the executive privilege and the security exemption. However, OGov’s production contained no actual redactions. In your Petition, you characterized OGov’s response as a “wholesale denial” of your request. In its March 31, 2017 response letter, OGov denied that its response constituted a “wholesale denial” of your request and maintained that its “redactions” were proper under FOIA.


On July 25, 2017, OGov’s counsel supplemented its response to your January 30, 2017 FOIA request. We note that, contrary to its February 14, 2017 production, OGov’s supplemental response contained a copy of Governor Carney’s Microsoft Outlook calendar for the relevant time period, inclusive of physical redactions of certain information contained therein. As such, we believe that your March 8, 2017 petition challenging OGov’s alleged “wholesale denial” of your

¹ Response Letter at Ex. A.


² *Id.* at Ex. B.

January 30, 2017 request for records is now moot.³ Accordingly, we need not determine whether Governor Carney's appointments and meetings calendars are exempted from FOIA's definition of "public record" in their entirety pursuant to 29 *Del. C.* § 10002(1)(6) and, more specifically, the common law executive privilege.⁴ Of course, you are free to submit a new petition if you remain unsatisfied with OGov's response.

Very truly yours,


Michelle E. Whalen
Deputy Attorney General

APPROVED:


Aaron R. Goldstein, State Solicitor

cc: LaKresha S. Roberts, Chief Deputy Attorney General (via email)
Aaron R. Goldstein, State Solicitor (via email)
Danielle Gibbs, Esq. (via email)

³ A matter is moot when there may have been a justiciable controversy at the time a matter was commenced, but that controversy ceases to exist prior to the arbiter's determination. *See Library, Inc. v. AFG Enterprises, Inc.*, 1998 WL 474159, at *2 (Del. Ch. July 27, 1998) (citing *General Motors Corp. v. New Castle Co.*, 701 A.2d 819, 823 (Del. 1997)).

⁴ *See Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Bd.*, 1994 WL 274295, at *3 (Del. Ch. May 19, 1994) (declaring moot and declining to retroactively adjudicate plaintiffs' claim of entitlement to certain records where the records had since been provided to plaintiffs). OGov specifically noted in a July 25, 2017 letter to this Office that its supplemental production should not be interpreted as a concession that its initial response constituted a "wholesale denial" of your request.