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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion 17-IB39

August 16, 2017

VIA EMAIL

Chris Witkowsky
cwitkowsky@buyoutsinsider.com

RE: August 15, 2017 Correspondence Regarding the Delaware Office of the State Treasurer

Dear Mr. Witkowsky:

I write in response to your correspondence, received in its entirety on August 15, 2017,¹ alleging that the Delaware Office of the State Treasurer (“OST”) violated the public records provisions of Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”).² Specifically, you allege that OST violated FOIA by denying your August 10, 2017 FOIA 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.”³ Here, the record demonstrates that

¹ I note that your initial correspondence, dated August 10, 2017, did not identify the Office of the State Treasurer and did not include its response.

² While I have decided to issue a determination here as a courtesy, I 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).

³ *Del. Op. Att’y Gen.* 17-IB14, 2017 WL 3426252, at *1 (July 6, 2017) (citing *Del. Op. Att’y Gen.* 16-IB20, 2016 WL 5888776, at *1 (Sept. 30, 2016)); *see also 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

you are a citizen of New York and you have said nothing to suggest otherwise. As such, it is my determination that OST did not violate FOIA by denying your request.

Very truly yours,



LaKresha S. Roberts
Chief Deputy Attorney General

cc: Michelle E. Whalen, Deputy Attorney General (via email)
Jason Staib, Deputy Attorney General (via email)

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.”).