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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 18-IB02**

**January 10, 2018**

**VIA EMAIL**

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**RE: December 11, 2017 FOIA Correspondence Regarding the Division of Public Health**

Dear Ms. Marvel and Mr. O'Donnell:

I write regarding your petition, received December 11, 2017, alleging that the Division of Public Health ("DPH") violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). I treat your correspondence as a petition for a determination pursuant to 29 *Del. C.* §10005 regarding whether a violation of FOIA has occurred or is about to occur ("Petition"). We invited DPH to submit a response to your Petition. We received DPH's response ("Response Letter") on December 19, 2017 and your reply ("Reply") on December 22, 2017. My determination is set forth below.

**RELEVANT BACKGROUND**

On October 16, 2017, Mr. O'Donnell sent a FOIA request to DPH for the following: "Call log for Animal Control, 302-255-4646, for 3 and 4th Qtr 2016 and 1 and 2 Qtr 2017."

On November 6, 2017, DPH's FOIA Coordinator sent Mr. O'Donnell the following response via email: "Attached is the call log for the time period in question. Information related to the caller (phone number, name, address) and details about the call have been removed as they are considered part of investigative case files. Unless you have additional questions about this specific FOIA request, the Division considers your request closed at this time. Thank you for your

FOIA inquiry to the Division of Public Health.” The response included a report containing the following information: date and time the report was received, case type, and county.

On November 8, 2017, Mr. O’Donnell sent an email to DPH’s FOIA Coordinator seeking clarification regarding which fields are in the complete call log and how call resolutions are tracked. Mr. O’Donnell copied Ms. Marvel on his email to DPH’s FOIA Coordinator.

On November 20, DPH’s FOIA Coordinator responded that the complete log includes the following fields: “Case #, Report Received (date), Officers Dispatched (date), Address Cat, First Name, Last Name, Street number, Street name, Apt. number, City, Zip, County, State, Phone 1, Phone 2, Notes, Case Disposition (notes), Case Type, Case Subtype, Officer 1, Officer 2, Officer 3, Officer 4, Case Closed, Case Closure Disp 2).” DPH also responded that “[c]ase status is tracked within LEISS, Delaware’s law enforcement investigative support system.”

On November 21, Ms. Marvel replied as follows: “1. In terms of the cases that are not active investigations, why weren’t the full details of those cases related to us? 2. Why weren’t the names of towns and addresses released to us (police provide addresses in the block form, i.e. ‘300 block of Elm Street)? 2. Why wasn’t the column indicating whether or not cases have been closed released to us? If the answer to any of these questions is merely because we did not specify that section of the call log, please provide us with the information.”

On November 27, 2017, DPH’s FOIA Coordinator replied that any records not provided are exempt from FOIA pursuant to 29 *Del. C.* § 10002(1)(3) as investigatory files.

### **POSITIONS OF THE PARTIES**

In your Petition, you allege that the information withheld does not fall within Section 10002(1)(3). Specifically, you allege that the address,<sup>1</sup> case disposition, case subtype, and case disposition are public records.

In its Response Letter,<sup>2</sup> DPH “acknowledges that case subtype, officer, case closed and case closure disposition are public records and apologizes that they were not provided sooner.”<sup>3</sup> DPH noted that it had already provided Mr. O’Donnell a supplemental response with only the victim/witness information and the case disposition redacted. “DPH maintains that addresses and

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<sup>1</sup> You appear to allege that DPH is required to provide the address in block form.

<sup>2</sup> DPH first argues that Ms. Marvel does not have standing to challenge DPH’s response to Mr. O’Donnell’s request. Response Letter at 3. Specifically, DPH notes: “As Mr. O’Donnell and Ms. Marvel made clear during Ms. Marvel’s previous FOIA appeals, the two are not to be conflated in regards to FOIA.” *Id.* While I recognize DPH’s concern, I do not address the issue of standing here.

<sup>3</sup> *Id.* at 4.

investigative narratives found in the case disposition category are components of an investigatory file that is exempt from the Freedom of Information Act.”<sup>4</sup>

In your Reply, you allege that DPH’s supplemental production was untimely, as it was sent on December 19, 2017. You allege that DPH’s initial response did not indicate what information was withheld or why. You also challenge DPH’s redaction of city, zip code, and case number in its supplemental production. Finally, you appear to allege that all material in an investigative file, with the exception of personally identifiable information such as names and phone numbers, should become public once the applicable statute of limitations expires.

### RELEVANT STATUTES

Pursuant to 29 *Del. C.* § 10003(h)(1), public bodies must “respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof, either by providing access to the requested records, denying access to the records or parts of them, or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived.” “If the public body denies a request in whole or in part, the public body's response shall indicate the reasons for the denial.”<sup>5</sup>

### DISCUSSION

As an initial matter, I note that DPH provided a reason for its initial denial as required by 29 *Del. C.* § 10003(h)(2). DPH’s FOIA Coordinator stated: “Information related to the caller (phone number, name, address) and details about the call have been removed as they are considered part of investigative case files.” However, as noted above, DPH now acknowledges that certain categories of information that DPH had initially withheld were public records that should have been provided. Specifically, DPH stated that it believed case subtype, officer, case closed and case closure disposition to be public records. While I need not specifically decide whether or the extent to which this information is indeed subject to FOIA, as that issue is no longer before me, DPH violated FOIA by failing to either provide the information or stating that additional time was needed for a permissible purpose within 15 business days as required by 29 *Del. C.* § 10003(h)(1). However, as you are now in receipt of the information, I do not believe remediation to be warranted for this FOIA violation.

I next address the question of whether DPH violated FOIA by denying access to the remaining categories of information pursuant to 29 *Del. C.* § 10002(1)(3). Specifically at issue are case number, address, city, zip, and investigative narratives found in the case disposition. Under the circumstances, I am satisfied that DPH did not violate FOIA by redacting case numbers, witness names, addresses, or the investigative narratives contained in the case disposition pursuant

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<sup>4</sup> *Id.*

<sup>5</sup> 29 *Del. C.* § 10003(h)(2).

to 29 Del. C. § 10002(1)(3). This includes city and zip code information, which may also be exempted from FOIA pursuant to 29 Del. C. § 10002(1)(6) and the common law right of privacy.<sup>6</sup>

Very truly yours,



Aaron R. Goldstein  
Chief Deputy Attorney General

cc: Allison E. Reardon, State Solicitor (via email)  
Michelle E. Whalen, Deputy Attorney General (via email)  
Joanna S. Suder, Deputy Attorney General (via email)

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<sup>6</sup> See *Bd. of Managers of the Del. Criminal Justice Info. Sys.*, 2003 WL 157170, at \*2 (Del. Super. Sept. 30, 2002) (concluding that geographic data in Delaware Criminal Justice Information System database, including zip codes, are protected by the common law right of privacy), *reh'g denied*, 2003 WL 1579170 (Del. Super. Jan. 17, 2003), *vacated for lack of subject matter jurisdiction*, 840 A.2d 1232 (Del. 2003).