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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion 18-IB18

April 6, 2018

VIA EMAIL

Bernard Garbo
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RE: FOIA Correspondence Regarding the Delaware Office of the State Banking Commissioner

Dear Mr. Garbo:

I write in response to your correspondence, received on April 2, 2018,¹ alleging that the Delaware Office of the State Banking Commissioner (“OSBC”) violated the public records provisions of Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”).² Specifically, you allege that OSBC violated FOIA by denying your October 26, 2017 FOIA request on the basis that you are not a citizen of the State of Delaware. Delaware’s FOIA does not prohibit a public body from denying a FOIA request on the basis that the requesting party is not a citizen of Delaware.³

¹ I note that your initial correspondence, dated March 29, 2018, was presented as a press inquiry and not a Freedom of Information Act petition. On April 2, 2018, a Department of Justice representative directed you to the Open Government website at <https://attorneygeneral.delaware.gov/executive/open-government/> and, more specifically, the Policy Manual for FOIA Coordinators and prior Attorney General Opinions.

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 See *Del. Op. Att’y Gen.* 17-IB39, 2017 WL 3628776, at *1 (Aug. 16, 2017) (no FOIA violation where Office of the State Treasurer denied a FOIA request on the basis that the requesting

The record is uncontroverted on this issue. The address you listed with your initial request and in your subsequent correspondence show that you are not a citizen of the State of Delaware. As such, and based upon the record before me, it is my determination that OSBC did not violate FOIA by denying your request.

Very truly yours,



Aaron R. Goldstein
Chief Deputy Attorney General

cc: Michelle E. Whalen, Deputy Attorney General
Frank Broujos, Deputy Attorney General

party was not a citizen of Delaware); *Del. Op. Att'y Gen.* 17-IB14, 2017 WL 3426252, at *1 (July 6, 2017) (no FOIA violation where New Castle County denied a FOIA request on the basis that the requesting party was not a citizen of Delaware); *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.”).