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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB27

May 31, 2018

VIA U.S. MAIL AND EMAIL

John Wells
2719 Barnsley Road
Wilmington, DE 19808
jwells8@aol.com

RE: FOIA Correspondence Regarding the Red Clay Consolidated School District

Dear Mr. Wells:

We write regarding your correspondence, wherein you allege that the Red Clay Consolidated School District ("District") violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). We treat your correspondence as a petition ("Petition") for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur. Because the District provided all responsive records on the eleventh business day following your FOIA request, we conclude that the District did not violate FOIA as alleged.

RELEVANT BACKGROUND

On April 17, 2018, you sent a FOIA request to Pati Nash, the District's FOIA Coordinator, for a list of the revenue received by the District in fiscal years 2007 and 2017. You later requested a status update on this request.¹ On May 2, 2018 at 1:38 pm, you contacted the District's governing board to state that you had not received a response and request that the board president act to require the information to be given to you. At 2:28 that day, Ms. Nash provided documents which include sources of revenue for fiscal years 2007 and 2018. On May 3, 2018, you emailed Ms. Nash to dispute the accuracy of the information provided and request that she confirm information about the records you were provided and the revenue sources of the District. On May 9, 2018, you mailed your Petition to this office.

¹ While you assert that the email was sent on April 27, 2018, we note that the copy that you included as an exhibit with your Petition did not include the date on which it was sent.

POSITIONS OF THE PARTIES

In your Petition, you requested that this office determine whether you received incomplete information from the District. We interpret this as a request to determine whether the District complied with the open records requirements of Delaware's Freedom of Information Act.

The District, through Superintendent Dr. Mervin Daugherty, submitted a response to your Petition on May 17, 2018. In the response, the District acknowledged that its FOIA policy states that responses will be provided within 10 days and that its response to Mr. Wells came on the eleventh day due to a previously scheduled vacation. Additionally, the District provided clarification as to why the document Mr. Wells received had a different amount for total revenue than the one received from the Department of Education.

On May 20, 2018 Mr. Wells sent a response in which he contested the accuracy of the District's responsive documents as well as the timeliness of its production.

RELEVANT STATUTES

FOIA requires that public bodies:

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 access cannot be provided within 15 business days, the public body shall cite 1 of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.²

DISCUSSION

Delaware's Freedom of Information Act requires public bodies to respond to FOIA requests within 15 business days. The District has acknowledged that its policy is to respond within 10 business days. The District responded to Mr. Wells' request on the eleventh business day. While this may violate the District's policy, the response came within the statutorily mandated 15 business days and, accordingly, does not violate FOIA.

The District states that it provided all responsive documents to Mr. Wells on the eleventh business day. Mr. Wells argues that these documents are not an accurate portrayal of the District's revenue even after clarification by the District. FOIA requires that public bodies give citizens access to public records. While other statutes may require accuracy in accounting and reporting, FOIA only requires that public records be released. In this case, the District provided all responsive records to Mr. Wells following his request. Therefore, the District did not violate FOIA.

² 29 Del. C. § 10003(h)(1).

CONCLUSION

Because the District produced all records responsive to your request on the eleventh business day, it is our determination that the District did not violate FOIA as alleged.

Very truly yours,



Joanna S. Suder
Deputy Attorney General

APPROVED BY:



Allison E. Reardon, State Solicitor

cc: Pati Nash, FOIA Coordinator, Red Clay Consolidated School District (via email)