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

**Attorney General Opinion No. 18-IB31**

**June 28, 2018**

**VIA US MAIL AND EMAIL**

Mr. Chris Dufresne  
282 Chanticleer Cr.  
Camden, Delaware 19934  
cdufresne@cwfc41.com

**RE: FOIA Petition Regarding the Camden-Wyoming Fire Company**

Dear Mr. Dufresne:

We write in response to your correspondence, received on June 1, 2018, alleging that the Camden-Wyoming Fire Company ("Fire Company") 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. Since you have alleged a violation of FOIA against an entity that has not been previously determined to be a "public body" under FOIA, the first and ultimately controlling issue in this case is whether the Fire Company is a "public body" within the meaning of FOIA. For the reasons set forth below, we conclude that the Fire Company is not a public body and therefore is not subject to FOIA.

**PROCEDURAL BACKGROUND**

On June 1, 2018, you sent a FOIA records request to the Fire Company for the following items: 1) the un-edited minutes of the Board of Directors meeting on April 23, 2018 in written and audio forms; and 2) the attendance roster for the April 23, 2018 meeting. Your request went unanswered, and you sent a Petition to this Office on June 1, 2018. In a letter dated June 18, 2018, Fire Company's legal advisor asserted that the Fire Company is not a "public body" as that term is defined in FOIA ("Response Letter"). On the same day, you sent a reply to this Office ("Reply") contesting the Fire Company's position that it is not a public body for three reasons: 1) its receipt of State grant-in-aid funding; 2) fire company members "fall under state of Delaware employees" in the performance of their duties; and 3) its grant of authority by the State Fire Commission. Further, your Reply indicated that the Fire Company had since provided you a copy of the shorthand meeting minutes in written form, but you still wished to receive the meeting audio in its entirety.

## FACTUAL BACKGROUND

The Camden-Wyoming Fire Company is a 501(c)(3) Delaware corporation that was incorporated in 1926.<sup>1</sup> Historical records indicate that various entities provided fire protection services to the Camden and Wyoming areas since the late 1800's.<sup>2</sup> The current corporation was formed by a reorganization of two former companies, the Wyoming Fire Company and the Rescue Hook and Ladder Company in Camden in 1917.<sup>3</sup> The Fire Company's membership is comprised of both volunteer and paid employees.<sup>4</sup>

## DISCUSSION

To determine if an entity is a "public body," and thus subject to FOIA, a two-part analysis is required. First, we must determine whether the entity is a "regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State" as further defined by the statute.<sup>5</sup> If so, we must next determine whether the entity is supported in whole or in part by any public funds, expends or disburses any public funds, or is impliedly or specifically charged to advise or to make reports, investigations, or recommendations. "Public funds," are defined as "those funds derived from the State or any political subdivision of the State."<sup>6</sup> Both parts of this test must be satisfied in order for an entity to be considered a "public body" under FOIA.<sup>7</sup>

The Fire Company is not a municipality or a political subdivision of the State. As a non-profit corporation, the Fire Company is separate and distinct from the municipalities of Camden

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<sup>1</sup> See Response Letter; "History – Camden-Wyoming Fire Company" <http://www.cwfc41.com/page/history> (last visited June 18, 2018); State of Delaware Division of Corporations," <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (last visited on June 27, 2018).

<sup>2</sup> See "History – Camden-Wyoming Fire Company" <http://www.cwfc41.com/page/history> (last visited June 18, 2018).

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

<sup>4</sup> "Camden-Wyoming Fire Company," <http://www.cwfc41.com/> (last visited June 27, 2018).

<sup>5</sup> 29 Del. C. § 10002(h)

<sup>6</sup> 29 Del. C. § 10002(k).

<sup>7</sup> See *Del. Op. Att'y Gen.* 12-IIB05, 2012 WL 1244481, at \*2 (Mar. 27, 2012) (noting that an entity is not a public body unless both parts of the two-part test are met); *but cf. State v. Camden-Wyoming Sewer and Water Auth.*, 2012 WL 5431035, at \*3-4 (Del. Super. Nov. 7, 2012) (two-part test not applicable if statute specifically designates an entity as a public body for purposes of FOIA).

and Wyoming. It was not established by an act of the General Assembly or a body established by the General Assembly. The Fire Company was not appointed by any body or public official of the State, or otherwise empowered by any state governmental entity. It is not a municipal fire department, but instead, it is a nonprofit corporation which has been authorized to serve both the Camden and Wyoming areas.<sup>8</sup> As such, the first element of a “public body” is not met and the Fire Company is not a public body.<sup>9</sup>

The other arguments asserted in your Petition do not alter this analysis. First, you mention that the Fire Company receives State grant-in-aid funding, but this point pertains to the second component of the analysis and does not affect the reasoning of the first element set forth above. Second, you allege that the Fire Company members “fall under” State of Delaware employees in the performance of their duties. However, even if members of the Fire Company have accepted some of the benefits offered to the Fire Company employees in the State Code, that is insufficient to transform the Fire Company into a “public body” for purposes of FOIA.<sup>10</sup> Finally, your Petition states that the Fire Company has been granted authority by the State of Delaware Fire Prevention Commission (“FPC”). The FPC has the authority to determine whether new fire companies or substations shall be authorized in any part of the State, to enter into agreements resolving boundary disputes, to require audits, and other related powers.<sup>11</sup> In essence, the FPC has some regulatory oversight of the fire companies in the State as specified by statute, but the FPC does not have any authority to establish a fire company.<sup>12</sup> The FPC’s regulation of the Fire Company or any other private corporation is not germane to whether that corporation is a “public body” for purposes of FOIA.

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<sup>8</sup> Pursuant to their respective charters, both Wyoming and Camden have the power, but not the obligation, to create and operate a municipal fire department and/or enact measures for fire protection. *See* Wyoming, Del., C. (Charter) §28; Camden, Del., C. (Charter) §25(a)(25). Importantly, those entities chose not to provide fire protection services as a directly-administered municipal service, but instead chose to rely on the Fire Company to provide fire protection services.

<sup>9</sup> It is not necessary to address the second component of the two-part test, since the first part of the test was not met. However, as this issue was specifically raised in your Petition, it bears repetition of the settled principle that the receipt of public funds alone is not sufficient to create a public body. *Del. Op. Att’y Gen.* 17-IB23, 2017 WL 2345247, at \*8 (July 14, 2017) (“However, an entity’s receipt of public funds does not automatically transform that entity into a “public body.”).

<sup>10</sup> *See e.g.*, 10 *Del. C.* § 4010 (extending provisions under the County and Municipal Tort Claims Act to “registered volunteer fire companies” by definition); 19 *Del. C.* § 2312 (“For purposes of this chapter, volunteer firefighters shall be treated as State employees so long as the State elects to be covered by the application of this chapter.”).

<sup>11</sup> 16 *Del. C.* § 6607.

<sup>12</sup> *See id.*

CONCLUSION

For the reasons discussed above, it is our determination that the Fire Company is not a public body and, therefore, the Fire Company is not subject to FOIA.<sup>13</sup>

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

APPROVED BY:



Allison E. Reardon, State Solicitor

cc: Aaron Goldstein, Chief Deputy Attorney General (via email)  
Craig T. Eliassen, Esq. (via email)

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<sup>13</sup> Several recent opinions support this conclusion. *See e.g., Del. Op. Att’y Gen. 17-IIB23*, 2017 WL 3426263, at \*7-8 (July 14, 2017) (finding that Brandywine Valley SPCA is not a “public body” as it is a “private, non-profit entity that contracts with the state for sheltering services”); *Del. Op. Att’y Gen. 15-IIB05*, 2015 WL 4850416, at \*2 (July 31, 2015) (finding that the Cape Henlopen Senior Center is not a “public body” since it is not a “regulatory, administrative, advisory, executive, appointive or legislative body”).