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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB39

August 16, 2018

VIA US MAIL & EMAIL

Ms. Sue Murphy Ogden
1416 Grant Ave.
Wilmington, Delaware 19806
susiemurphyogden@yahoo.com

RE: FOIA Petition Regarding the Christina School District

Dear Ms. Ogden:

We write in response to your correspondence received on July 27, 2018, alleging that the Christina School District (“District”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur. You allege that the District has violated FOIA by not providing records in response to your request for certain school information. Based on the representations of the District, that the records that are the subject of the Petition do not exist, we conclude that the District has not violated FOIA with respect to your records request.

PROCEDURAL BACKGROUND

On July 27, 2018, you filed a Petition with this Office, referencing a series of emails and attachments related to your FOIA requests to the District. These records indicate that you made three separate FOIA requests to the District: 1) June 29, 2018 records request; 2) July 11, 2018 records request; and 3) July 17, 2018 records request (collectively, “Records Requests”). The District responded to each of these requests as follows.

On June 29, 2018, you requested FY 2016-2017 and FY 2017-2018 reports similar to the “old DMFS 605 report.”¹ You requested that the information be provided at the school level. The

¹ Petition.

District responded on July 9, 2018, stating that “[n]either the State of Delaware nor the Christina School District generate a report with the information requested on a school level.”² The District also pointed you to its DGL 115 report in its monthly reports and the monthly reports on their website, in addition to the Board report posted on BoardDocs.

On July 11, 2018, you submitted a second request:

Raw data: all data shows individual building appropriations (with appropriations code). Expenditures FY 2016-2017; 2017-2018; Christina School District Middle/HS exclude Brennan Delaware Autism Reach; Data presented by individual school. Sample enclosed via email of previous 605 report by DMFS. I am not interested in district summary reports. I am interested in all appropriations including units; Federal Special Ed (IDEA) all grants that have an individual appropriation code. I would like to see the raw data for the each appropriation, for each FY, for each building. The data should show: How much was appropriated for X school? How much was spent.³

The District responded to this request on July 17, 2018. Initially, the District acknowledged that you were not interested in district summary reports and wanted information at a school level. The District then responded further:

The report you referenced was a district level report and while a charter school may be a district of one school, the same is not the case for traditional public schools... In the event you are not aware, the Delaware General Assembly has recognized this challenge, and through Senate Bill 172, as amended by Senate Amendment No. 1 and House Amendment No. 2, has directed the Department of Education to create a standardized statewide approach to collecting and reporting school-level-per-pupil expenditures that all districts and charters must follow. [link omitted]. ...

As to your specific request for fiscal years 2016-2017 (Fiscal 2017) and 2017-2018 (Fiscal 2018), school level expenditure the reports you seek today do not exist. As such, we are not able to accommodate your request.⁴

On the same day of the District’s response to your second request, you submitted a third request. After describing the information that you received in the District’s second response and the codes used for the data, you noted that “[W]hat is striking and the intent of this FOIA clarification is the absence of a clear picture about where Christina School District spent their money on teachers at the building level.”⁵ In this request, you submitted a request for “a detailed

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

breakdown of the accurate expenditures of tax payer money at the “Sch Code Descr level.”⁶ You also attached a spreadsheet “to my email to Bob Silber to show the detail I received from the state that lawfully requires further elaboration at the Sch Code Descr (Building Level).”⁷

On July 23, 2018, the District responded to this third request and “to the separate email forwarded to Bob Silber’s attention raising questions regarding the accounting for units earned and allocated to schools.”⁸ The District stated that “there are no reports that provide the level of information you seek.”⁹ In addition, the District noted that the aforementioned legislation had been passed by the General Assembly and was awaiting the Governor’s action. This bill would require the “Department of Education to create a standardized statewide approach to collecting and reporting school-level-per-pupil expenditures that all districts and charters must follow.”¹⁰ With respect to your request for “information regarding the unit count,” the District provided several documents including Needs Based District Enrollment Packet Forms for school year 2016 - 2017, Needs Based District Enrollment Packet Forms for school year 2017 - 2018, and Statewide – Unit-Count-Agreed-Upon Procedures Engagement issued by the State of Delaware Auditor for school year 2016-2017.

You then sent a Petition to this Office stating that you “believe there has been a violation” and that the District has “reports they run from some accounting program that allows them to report the [requested] information as a summary.” On August 6, 2018, the District’s counsel provided a letter (“Response”) stating that the District “simply does not have the information that is the subject of the Complaint.” The District also supplied an affidavit executed by Assistant Superintendent and Chief Financial Officer Robert A. Silber verifying that the District “does not possess a report identifying on a school level the amount of expenditures spent on teacher, special education teacher, or paraprofessional staffing.”¹¹ By email dated August 6, 2018, you asserted that the District’s statement regarding the nonexistence of the information is not accurate for two reasons. First, you stated that Delaware Code “requires the district to make sure 95% of the units earned by an individual school are spent/allocated to the individual school.” Second, you stated that the District reports in their Open Budget documents the percentage spent at the building level, and “the details to create this summary are the heart of my request.” Thus, you argued that is “neither logical or legal” for the District to claim they do not have information on expenses/staffing costs

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Response, Affidavit of Robert A. Silber.

at the building level.” For the reasons set forth below, this Office finds no violation of FOIA in these circumstances.

DISCUSSION

As a general matter, FOIA states that all “public records,” as defined by statute, be open to inspection and copying during regular business hours and requires a public body to “provide reasonable assistance to the public in identifying and locating public records to which they are entitled access.”¹² However, “FOIA does not require a public body to produce public records that do not exist”¹³ nor to “compile the requested data from other public records that may exist.”¹⁴ With respect to electronic databases in particular, the public body does not have to manipulate or restructure the substantive content of a record, such as creating new records through a “computer run” or converting existing information into a different format or file system.¹⁵ If the request amounts to a “mere exportation of existing data” from a database to a spreadsheet, this Office has determined that this record must be provided.¹⁶ This Office accepts the representations of a public body, including legal counsel’s statements, regarding the existence of its public records, and the

¹² 29 *Del. C.* § 10003.

¹³ *Del. Op. Att’y Gen.* 06-IB10, 2006 WL 1779491, at *2 (May 4, 2006); (quoting *Del. Op. Att’y Gen.* 05-IB19, 2005 WL 2334347, at *5 (Aug. 1, 2005) (quoting *Del. Op. Att’y Gen.* 96-IB28, 1996 WL 517455, at *2 (Aug. 8, 1996)).

¹⁴ *Del. Op. Att’y Gen.* 17-IB02, 2017 WL 955566, at *6 (Feb. 8, 2017); *Del. Op. Att’y Gen.* 97-IB06, 1997 WL 606408, at *3-4 (Mar. 17, 1997).

¹⁵ *Del. Op. Att’y Gen.* 06-IB17, 2006 WL 2630107, at *6 (Aug. 21, 2006) (“We determine that FOIA does not require the Commission to convert its electronic database from a relational database into CVS (comma separated) files.”); *Del. Op. Att’y Gen.* 04-IB14, 2004 WL 1547683, at *2 (June 28, 2004) (citation omitted) (stating that “FOIA does not require an agency to make a summary or compilation of information in public records, or to produce computerized data in a special format requested by a citizen” and that “it is not ‘necessary for a computer operator to create new records through a computer run, i.e., a search of the online database, accomplished by entering the [requesting party’s] search criteria.’ ”); *see also Del. Op. Att’y Gen.* 07-IB19, 2007 WL 4732802, at *3-4 (Aug. 28, 2007) (citation omitted) (“As for the tax billing information you most recently requested, our Office is satisfied that to provide you with such information would require extensive computer programming to create a new public record which FOIA does not require.”); *but cf. Del. Op. Att’y Gen.* 17-IB32, 2017 WL 3426272, at *3 (July 25, 2017) (concluding that “we do not view the mere exportation of existing data to a Microsoft Excel spreadsheet as the creation of a new record”).

¹⁶ *Del. Op. Att’y Gen.* 17-IB32, 2017 WL 3426272, at *3 (July 25, 2017).

belief that certain documents or information must exist has been found insufficient to overcome a public body's representations to the contrary.¹⁷

In your Reply, you claim that the information exists, since the District generated a public summary report regarding the percentage spent at building level and the State Code requires the District to ensure "95% of the units earned by an individual school are spent/allocated to the individual school."¹⁸ To the extent you alleged violations outside of FOIA, this Office lacks the authority to decide those issues.¹⁹ In its Response, the District attested that it does not possess a report showing staffing expenditures at the building level, broken out to identify expenditures for teachers, paraprofessionals, and special education teachers.²⁰ The District's counsel further stated that the District "simply does not have the information that is the subject of the Complaint" and cited to past Delaware Attorney General opinions determining that a public body is not required to pull together an accounting from other sources and arrange it in a requested format to create a new record.²¹ Accordingly, based on the District's affidavit and representations by the District's counsel, we find no violation of FOIA regarding your Records Requests to the District.²²

¹⁷ *Del. Op. Att'y Gen.* 18-IB29, 2018 WL 2994702, at *3 (June 5, 2018) (relying on affidavit of custodian to determine the existence of records); *see Del. Op. Att'y Gen.* 15-IB14, 2015 WL 9701645, at *3 (Dec. 29, 2015); citing *Del. Op. Att'y Gen.* 07-IB21, 2007 WL 4732804, at *2 (Oct. 22, 2007) (quoting *Del. Op. Att'y Gen.* 05-IB19, 2005 WL 2334347, at *5 (Aug. 1, 2005)) ("It has been our historical practice to accept such representations from an attorney for the custodian of public records to determine that such documents do not exist for purposes of FOIA.").

¹⁸ Reply.

¹⁹ 29 *Del. C.* § 10005.

²⁰ Response.

²¹ Response. The District's counsel does not separately address each records request, which described the requested information in various ways, including "raw data" and the "Sch Code Descr level." However, given the broad nature of his representation, we interpret it on its face to apply to the three Records Requests.

²² This Office previously decided that the "mere exportation of existing data" to a spreadsheet is not the creation of a new record, and this type of record from a database must be provided. To the extent that the District has any information responsive to your Records Request requiring the exportation of existing data, it should provide that data in accordance with FOIA. *See Del. Op. Att'y Gen.* 17-IB32, 2017 WL 3426272, at *3 (July 25, 2017).

CONCLUSION

For the reasons discussed above, it is our determination that the District has not violated FOIA with respect to your Records Requests.²³

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

APPROVED BY:



Allison E. Reardon
State Solicitor

cc: James H. McMackin, III (via email)

²³ In this matter, this Office has continued its longstanding practice of accepting both sworn and unsworn statements of attorneys representing public bodies with respect to the absence of responsive records. However, attorneys for public bodies are strongly advised to provide sworn affidavits from persons with knowledge when responding to petitions filed with this Office under the FOIA statute with a claim that no responsive documents exist. Such affidavits are already expected from attorneys invoking FOIA exemptions without providing detailed information about specific documents. *See Flowers v. Office of the Governor*, 167 A.3d 530, 549 (Del. Super. 2017).