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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB06

February 13, 2019

VIA EMAIL

Mr. Craig O'Donnell
Dover Post
craig.odonnell@doverpost.com

RE: FOIA Correspondence Regarding the New Castle County Police Department

Dear Mr. O'Donnell:

We write in response to your correspondence alleging that the New Castle County Police Department ("NCCPD") 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 with regard to your records request. For the reasons set forth below, we conclude that NCCPD has not violated FOIA as alleged.

BACKGROUND

On September 10, 2018, you sent NCCPD a records request through a web service provided by "MuckRock" for the following documents:

- The Equitable Sharing Agreement and Certification forms submitted as required to the United States Department of Justice for the years 2011 through 2018.
- Total civil asset forfeiture figures per year for the years 2010 through the date this request is processed.
- Grant application documents submitted to SLEAF, 2010 to date.
- Grant awards (notifications, transmittal letters, etc[.]) from SLEAF, 2010 to date.¹

¹ Petition.

You sent this request to the attention of Sergeant Piser at NCCPD. On October 9, 2018 and October 24, 2018, you contacted Sergeant Piser to inquire about the status of your request. On October 24, 2018, Sergeant Piser replied that he was not the correct contact and had “forwarded [your request] to the correct people the last few times and have done so again.”² At your request, Sergeant Piser provided a webpage with the correct contact information. On December 14, 2018, Assistant Chief William Streets sent you a letter indicating that NCCPD would respond by February 2019 due to the size of your request. On January 15, 2019, you contacted Assistant Chief Streets and stated that the request had been submitted on September 10, 2018 and re-submitted via email on December 5, 2018, but you had not received a response to your request, nor had Sergeant Piser forwarded the request to the appropriate contact when you initially submitted the request.

You filed a Petition with this Office on January 23, 2019, asserting that NCCPD’s failure to provide responsive documents in four months violated FOIA’s time provisions and was “tantamount to a denial.”³ Further, you alleged you received inadequate assistance from NCCPD, because you did not receive any communication asking if you wished to simplify or divide the request for a rolling production and that no request for clarification was received.

On January 29, 2019, NCCPD submitted correspondence (“Response”) through its counsel. NCCPD asserted that you did not submit your request to the FOIA Coordinator listed on the County’s website, Assistant Chief Streets, until December 5, 2018 and Sergeant Piser had not forwarded the request to Assistant Chief Streets. NCCPD further asserted that several requested documents have been provided and that you were advised on January 24, 2019 that the collection of remaining documents would be completed by March 1, 2019.

You submitted a Reply on January 30, 2019.⁴ You asserted that Sergeant Piser had a responsibility to ensure that the request reached the correct person, that NCCPD asserted a delay without adequate justification, and that NCCPD failed to offer to divide the request, prioritize the items of the request, or to state number of pages in the production, thus failing to assist you as required by the statute.

DISCUSSION

Your Petition raised two issues: 1) whether the responses of NCCPD to your request were untimely; and 2) whether the FOIA Coordinator provided adequate assistance and cooperation under the FOIA statute.

² Petition.

³ Petition.

⁴ We address allegations raised in the Petition only. *See Del. Op. Att’y Gen.* 18-IB51, 2018 WL 6591816, at *FN 4 (Nov. 20, 2018).

With respect to the first issue, you alleged that NCCPD's responses were not timely. As required by the FOIA statute, New Castle County has a web portal for receiving FOIA requests through the internet, and NCCPD has identified its FOIA Coordinator on its website, who serves as the point of contact for NCCPD FOIA requests.⁵ Your request was not submitted to the FOIA Coordinator.⁶ When NCCPD's FOIA Coordinator received the request, he sent you a response within the statutory timeframe stating that additional time was needed due to the breadth of your request. NCCPD has since provided a portion of the records and sent you a timely letter informing you that additional time will be needed to pull the remaining voluminous records (117 grant applications). The anticipated date for completing the request is March 1, 2019. In reviewing these circumstances, we do not find any violation of the timeframes set forth in the FOIA statute.

Second, you argued that the FOIA Coordinator failed to provide adequate cooperation and assistance as required by the FOIA statute. You cited several alleged instances, including failing to suggest that you narrow or divide your request to allow rolling production and failing to ask you for clarification of your request. FOIA requires public bodies to "provide reasonable assistance to the public in identifying and locating public records to which they are entitled access" and the FOIA Coordinator must "work to foster cooperation between the public body and the requesting party."⁷ This analysis necessitates a "fact-based examination" of the circumstances.⁸ There is no indication that NCCPD required clarification from you to complete the request. Additionally, you wanted the FOIA Coordinator to offer you alternatives regarding production. However, you did not convey those requests to NCCPD, and the statute does not require public bodies to offer a manner of production that was not requested. We conclude that NCCPD has not violated its duties under 29 *Del. C.* §10003(g) in this instance.

⁵ 29 *Del. C.* § 10003(b), (g).

⁶ Response. We do not agree that a FOIA request misdirected to an employee other than the properly identified FOIA Coordinator constitutes a public body's receipt of a FOIA request. Although we certainly encourage public bodies to educate their employees to send misdirected FOIA requests promptly to the FOIA Coordinator (as NCCPD intends to do, as cited in its Response), NCCPD met its statutory obligation in making the proper contact information available to the public through its website.

⁷ 29 *Del. C.* §10003(g).

⁸ *Del. Op. Att'y Gen.* 18-IB51, 2018 WL 6591816, at *FN 4 (Nov. 20, 2018).

CONCLUSION

As the request was timely handled upon receipt by the FOIA Coordinator and NCCPD has met its obligations under 29 *Del. C.* §10003(g), it is our determination that NCCPD has not violated FOIA.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Allison E. Reardon

Allison E. Reardon
State Solicitor

cc: Carol Dulin, Esq., County Attorney, New Castle County (via email)