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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB15

March 20, 2019

VIA US MAIL

Mr. Peter Kostyshyn
[REDACTED]
PO Box 500
Georgetown, Delaware 19947

RE: FOIA Petition Regarding the City of Wilmington

Dear Mr. Kostyshyn:

We write in response to your correspondence alleging that the City of Wilmington (“City”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) in regard to your request for records. 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. For the reasons set forth below, we conclude that the City has not violated FOIA as alleged.

BACKGROUND

Our Office received your Petition, in which you appeal the denial of your FOIA request, asking our Office to investigate the City’s response “for compliance,” noting that “at a minimum, the first twenty pages are requested for Purzycki’s installation.”¹ The FOIA request was for “the appointment calendar of M. Purzycki, the visitor’s [sic] to the Mayor’s office since instillation [sic] as Mayor to present.”² By letter dated January 31, 2019, the City responded that it would take approximately 2.25 hours “to fully identify and process” the request, that approximately 1226 documents would need to be photocopied, the first twenty copies of which would be produced free of charge, and that upon receipt of payment of the total estimated cost of \$170.01 to process this

¹ Petition.

² *Id.* (quoted in original format).

request, the City would make the copies available to you, noting that additional fees may be required for actual reproduction costs incurred and must be paid prior to the document release.³

DISCUSSION

One of FOIA's primary purposes is to grant citizens access to public records.⁴ However, the requestor is responsible to pay for the photocopying and administrative costs associated with the records request as set forth in 29 *Del. C.* § 10003(m). The public body must produce an itemized written cost estimate listing its expected costs.⁵ "Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request."⁶ Here, the City has provided a cost estimate to you for producing the full scope of responsive documents, and you indicated in your Petition that you would like to receive, at a minimum, twenty pages of the records. As the City has not improperly denied records and merely presented a cost estimate for your consideration and that estimate contemplates providing you with twenty copies free of charge, we find that FOIA has not been violated as alleged.

CONCLUSION

Thus, it is our determination that the City has not violated FOIA as alleged.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Allison E. Reardon

Allison E. Reardon
State Solicitor

cc: Robert Goff, Esq., City Solicitor (via email)

³ *Id.*

⁴ 29 *Del. C.* § 10001.

⁵ 29 *Del. C.* § 10003(m)(2).

⁶ *Id.*