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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB18

April 2, 2019

VIA EMAIL

Mr. Christopher Teacher
airforceknt@yahoo.com

RE: FOIA Petition Regarding the Delaware Department of Correction

Dear Mr. Teacher:

We write in response to your correspondence alleging that the Delaware Department of Correction (“DOC”) violated the public records provisions of Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) in connection with your request for records. We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* §10005 regarding whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that DOC has not violated FOIA as alleged.

BACKGROUND

On March 5, 2019, you sent a records request to DOC for “presentence investigation reports” for sixteen executed inmates.¹ DOC denied the request for two reasons: 1) 29 *Del. C.* § 10002(1)(3) excludes from the definition of public records any investigatory files compiled for criminal law-enforcement purposes; and 2) 11 *Del. C.* § 4322(a) does not permit the DOC to disclose supervision history and all other case records obtained in the discharge of their official duty other than to designated entities which include the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney General. This Petition followed.

¹ Petition.

Your Petition argues that DOC should have responded to your FOIA request because although you understand that the statute exempts these records, “some court cases and opinions seem to favor allowing this information to be disclosed.”² Further, you argue that the spirit of the FOIA law requires transparency, especially where the executed inmate does not have privacy to protect and such disclosure would benefit the public by showing the inmate’s execution was fair. Finally, you acknowledge that you are not a resident of this State but argue that the Privileges and Immunities Clause prevents a state from treating you in a discriminatory manner.

DOC provided its response to the Petition through counsel (“Response”). DOC argues that your FOIA request was appropriately denied pursuant to 29 *Del. C.* § 10002(1)(3) and 29 *Del. C.* § 10002(1)(6).³ Additionally, DOC asserts that as you are not a citizen of this State, you are not entitled to compel disclosure of documents under Delaware’s FOIA laws, nor is DOC required to fulfill your records requests.

In your Reply, you assert that case law supports granting your request. Additionally, you note that the criminal files and records are only excluded to the extent disclosure would constitute an invasion of personal privacy, and executed inmates do not have privacy rights. Further, you argue that the details of the crime are public. As a compromise, you state that you would agree to the redaction of certain materials within the presentence investigation reports. Finally, you question whether “the state of Delaware really want[s] to spend time and resources defending the privacy rights” of these inmates “in possibly a California Federal Court.”⁴

DISCUSSION

You requested presentence investigation reports from DOC. Pursuant to 29 *Del. C.* § 10002(1)(3), investigatory files compiled for criminal law-enforcement purposes, including “presentence investigations” are not “public records.”⁵ The statutory exemption is explicit with regard to these records, and unlike other exemptions in FOIA’s public records provisions, privacy is not a factor in the application of 29 *Del. C.* § 10002(1)(3).⁶ In addition, DOC referred to 29 *Del. C.* § 10002(1)(6), which provides that records specifically exempted from public disclosure by statute or common law shall not be considered “public records.” DOC cited to 11 *Del. C.* § 4322(a) which only permits the DOC to release presentence report and all other case records to certain

² Petition.

³ Response.

⁴ Reply.

⁵ 29 *Del. C.* § 10002(1)(3).

⁶ See 29 *Del. C.* § 10002(1)(1) (“any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy. . .”); 29 *Del. C.* § 10002(1)(4) (“criminal files and records, the disclosure of which would constitute an invitation of personal privacy”).

designated entities or as directed by an order of a court or the Board of Pardons.⁷ The record does not reflect that you have obtained a qualifying order requiring DOC to produce records or that you otherwise represent one of the statutorily-referenced entities. Accordingly, DOC's disclosure of the requested presentence investigation reports is prohibited by 11 *Del. C.* § 4322(a) based on the record before us. Therefore, we find that DOC did not violate FOIA in denying your request, and we need not address the remaining issue.⁸

CONCLUSION

For the reasons set forth above, we determine that DOC has not violated FOIA as alleged.

Very truly yours,



Aaron R. Goldstein
Chief Deputy Attorney General

cc: Gregory E. Smith, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁷ Under 11 *Del. C.* § 4322(a), presentence reports prepared for the Superior Court and the Court of Common Pleas are “under the control of those Courts respectively.”

⁸ While we have decided to issue a determination regarding the merits of your claim, we feel compelled to note that as a non-citizen of Delaware, you may lack standing to avail yourself of the enforcement provisions contained in 29 *Del. C.* § 10005, including the petition process set forth in Section 10005(e).