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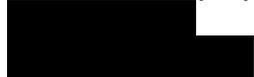
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB33

July 1, 2019

VIA US MAIL

Mr. Peter Kostyshyn



Wilmington, DE 19802

RE: FOIA Petition Regarding the Delaware Department of Insurance

Dear Mr. Kostyshyn:

We write in response to your correspondence alleging that the Delaware Department of Insurance (“DOI”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) with regard to your records request. 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, it is our determination that DOI has not violated FOIA as alleged.

BACKGROUND

You sent DOI the following records request:

1) time stamped copies of this filing and envelope mailed in; 2) all resulting letter’s, email’s, fax’s, note’s it generates; 3) any record’s, note’s, file’s on any Kostyshyn matter’s while an employee of any governmental office in the entire State of Delaware be it state/local governments/municipalities.¹

DOI provided a response dated May 28, 2019, denying the first request and requesting additional information about the second and third requests. Regarding the first request, DOI stated that FOIA does not require a public body to provide a time-stamped copy of the requestor’s letter. For your second request, DOI stated the request was unclear and asked you to provide a timeframe,

¹ Petition.

the sender or recipient of the communications, and the subject of the communications. In response to your third request, DOI requested that you provide a timeframe, the sender or recipient of the communications and asked you to clarify the phrase: “while an employee of any governmental office in the entire State of Delaware be it state/local governments/municipalities.”²

In your Petition, you ask this Office to “investigate and compel discovery.”³ You allege that DOI did not provide a time-stamped copy of the request and envelope and that your request was “specific and clear.”⁴

DOI responded through counsel on June 17, 2019 (“Response”). DOI asserts that it sent you a receipt letter on May 8, 2019 with copies of the date-stamped envelope and your FOIA request. DOI argues that it is only required to make the records available for inspection and copying, and thus went beyond FOIA’s requirements in sending you copies of the records requested. DOI contends that it committed a “drafting error” in not having extended an express invitation to inspect and copy records requested in their office but extended such an invitation to you or your courier in the Response.⁵ DOI further argues that its request that you provide clarification with regard to your second and third request demonstrated that those requests are still open rather than denied and thus not ripe for consideration by this Office.⁶ If this Office deems these claims ripe, DOI further asserts that the two requests were not sufficiently specific to allow DOI to identify responsive records.

DISCUSSION

As a preliminary matter, your request to “investigate and compel discovery” exceeds this Office’s authority under the FOIA statute.⁷ FOIA requires a public body to provide reasonable access to public records.⁸ With regard to your first request, DOI represents that it provided a copy of your date-stamped envelope in which the FOIA request was received and a copy of your FOIA request. As proof of compliance, DOI enclosed copies of these records with its Response. Thus, through this process, you have been sent another copy of these records. We cannot find a FOIA violation on this record.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Response.

⁶ *Id.*

⁷ 29 *Del. C.* § 10005.

⁸ *See* 29 *Del. C.* § 10003(a).

Regarding DOI's request for additional clarification for the second and third items of your request, FOIA requires a requesting party to "adequately describe the records sought in sufficient detail to enable the public body to locate such records with reasonable effort" and to be "as specific as possible when requesting records."⁹ The second request seeks any letters, emails, faxes, or notes "it" generates. This request is unclear as to what "it" is referring, and on that basis, we find DOI did not violate FOIA by requesting clarification.

The third request seeks the records on any Kostyshyn matters "while an employee of any governmental office in the entire State of Delaware," including any state, local government, or municipality. This request is insufficiently vague, and on that basis, we find DOI did not violate FOIA by requesting clarification.¹⁰

CONCLUSION

Thus, we determine that DOI has not violated FOIA as alleged.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Kathleen P. Makowski, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁹ 29 *Del. C.* § 10003(f).

¹⁰ In addition to the matters noted above, DOI also requested information regarding the timeframe, sender and/or recipient of the records. As stated therein, FOIA specifically authorizes the public body to request this type of information known to the requesting party, and in certain circumstances, such information may be required to make the request sufficiently specific. *See* 29 *Del. C.* § 10003(f). As we have found that clarification is necessary here, we do not address these information requests specifically.