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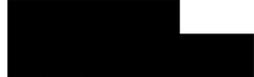
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB35

July 2, 2019

VIA US MAIL

Mr. Peter Kostyshyn



Wilmington, DE 19802

RE: FOIA Petition Regarding the Delaware Auditor of Accounts

Dear Mr. Kostyshyn:

We write in response to your correspondence alleging that the Delaware Auditor of Accounts (“AOA”) violated 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 below, we find no basis to conclude that AOA violated FOIA as alleged.

BACKGROUND

AOA received your FOIA request on April 30, 2019, which contained two separate documents. The first document included a narrative followed by two questions, and your second document sought four categories of records: 1) “time stamped copy of this filing and envelope it was mailed in; 2) “all resulting letter’s, e-mail’s, note’s, it generates;” 3) the Auditor’s policy “on documenting on state monthly timesheets the early office closure’s, the rule’s, the timesheet used by this office to document hours worked;” 4) “all date’s reason’s, hour’s, which the auditor’s office has closed earlier than other De office’/departments since the start of the current auditor.”¹

¹ Petition (quoted in original format).

AOA responded on May 21, 2019, addressing each numbered item in the second document, as follows: 1) enclosing a copy of the time-stamped envelope; 2) noting that there are no responsive documents under 29 Del. C. § 10002(l)(6); 3) enclosing an AOA policy; and 4) noting that the current Auditor has not closed the office earlier than other State offices. No separate response was provided to the first document. This Petition followed.

In your Petition, you ask this Office to “investigate and compel FOIA compliance,”² as you claim that AOA’s response was inadequate for two reasons. First, you allege that you wrote to the current Auditor seeking the public information of the current Auditor, and second, you contend that no AOA policy was enclosed with the response.

On June 17, 2019, AOA’s counsel replied to your Petition by letter (“Response”), arguing that AOA has fulfilled its obligations under FOIA. AOA contends that it need not provide a response to the narrative and two questions contained in the first document, as FOIA does not require a public body to answer questions or respond to a narrative. AOA also states that the AOA internal policy, Policy No. 5.2, was enclosed with its May 21, 2019 response and attached this policy again to this Response. AOA asserts that this policy is responsive to your request for a policy relating to timekeeping and office closures. Finally, despite noting your Petition does not raise this issue, AOA also encloses copies of the timesheet templates that AOA staff uses to document its working hours.

DISCUSSION

In the Petition, you allege that AOA’s response did not address the current Auditor’s records and AOA failed to include the policy in response to the third item in your request. AOA’s counsel represents that AOA sent a copy of its current policy with its May 21, 2019 response and includes a copy of the responsive policy again with its Response to this Petition.³ AOA indicates you were sent a carbon copy of the Response by United States mail. Therefore, you now have been sent AOA’s current office policy regarding time reporting, which AOA asserts is the only policy “AOA maintains with respect to early office closures, weather-related or otherwise.”⁴ Accordingly, we cannot find a FOIA violation on this record.

² Your request to “investigate and compel discovery” exceeds this Office’s authority under the FOIA statute. *See* 29 Del. C. § 10005.

³ *See Del. Op. Att’y Gen.* 15-IB14, 2015 WL 9701645, at *FN 14 (Dec. 29, 2015) (“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.”).

⁴ Response.

CONCLUSION

For the reasons set forth above, we find that AOA did not violate FOIA as alleged in the Petition.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Frank N. Broujos, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General