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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB37

July 5, 2019

VIA EMAIL

Mr. Jeffrey Clouser
Jclouser1@gmail.com

RE: FOIA Petition Regarding the Delaware State Police

Dear Mr. Clouser:

We write in response to your correspondence alleging that the Delaware State Police (“DSP”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) in connection with your requests 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 that DSP failed to demonstrate it provided a timely response to your FOIA request, and we encourage DSP to monitor its requests and provide timely responses in the future.

BACKGROUND

You allege that you sent a FOIA request to the State Bureau of Investigation of DSP on May 13, 2019 requesting your “Delaware State Police Initial Crime Report” dated February 23, 2009 without any information redacted.¹ You did not receive a response to this request, and you filed a Petition with our Office.

¹ Petition.

The Petition alleges that DSP missed its deadline of fifteen days to respond under the FOIA statute. You note that DSP “by law can only send the Initial Crime Report to the victim, which is me, hence my request.”²

On June 20, 2019, DSP’s counsel replied to your Petition (“Response”). DSP concedes that it has been unable to determine when it first received your FOIA request for an unredacted copy of the report, apologizing for the oversight and encouraging you to contact the FOIA Coordinator about delayed responses. DSP argues that the requested record is not a public record under FOIA pursuant to 29 *Del. C.* § 10002(l)(3) as it is part of a criminal law enforcement investigatory file and Section 10002(l)(9) as you are a litigant seeking records for pending litigation. Finally, DSP asserts that 11 *Del. C.* Ch. 94 requires the redactions DSP made to the document.

You submitted a Reply on June 24, 2019. First, you allege that you left voicemails for the DSP FOIA Coordinator on three occasions, which were not returned. You argue that this request was mismanaged, and DSP’s excuse is not valid, as DSP acknowledges that it located your request on June 3, 2019, prior to your three phone calls. Second, you contend that 29 *Del. C.* § 10002(l)(3) does not apply, as there is no invasion of privacy and no current investigation. Third, you note that the redacted version of this record is already part of the court’s record in your civil case and that you are seeking an unredacted copy. You assert DSP’s reliance on the Victim Bill of Rights to justify the redactions is misplaced, as no criminal activity was found. Finally, you allege that DSP’s response contradicts the “Delaware Certification of Adoption of Transparency and Sustainability Standards Act” enacted by Governor Carney on October 1, 2018.

DISCUSSION

FOIA requires a public body to provide a response to a FOIA request within fifteen business days by either denying or granting access or stating additional time is needed to complete the request for a statutorily-acceptable reason and providing a good faith estimate for completion.³ DSP asserts its reasons for denying your records request in its Response to this Petition. However, DSP acknowledges that it is uncertain about when exactly it received your request, and therefore, DSP cannot demonstrate its response was timely. As you have now received DSP’s response to your FOIA request in DSP’s Response to this Petition, we do not recommend additional steps, but we encourage DSP to track FOIA requests with care and provide timely responses in the future.

You make new allegations in your Reply with regard to the propriety of DSP’s response to your records request. Consistent with our Office’s practice, we do not address the new

² *Id.*

³ 29 *Del. C.* § 10003(h).

allegations in your Reply.⁴ However, we note that to the extent you believe another Delaware statute entitles you to an unredacted version of your requested records due to your status as a victim, or that the DSP's reliance on the Victims Bill of Rights is inapposite, this Office's jurisdiction is limited to FOIA, and we cannot opine on whether another Delaware statute provides you with access to these records.⁵

CONCLUSION

We conclude that DSP failed to demonstrate it made a timely response to your FOIA request, and we encourage DSP to monitor its requests and provide timely responses in the future.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Joseph C. Handlon, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁴ Our consideration is limited to the claims raised in the Petition. *See, e.g., Del. Op. Att'y Gen.* 18-IB51, 2018 WL 6591816, at *FN 4 (Nov. 20, 2018); *Del. Op. Att'y Gen.* 12-IIB11, 2012 WL 5894039, *4 (Nov. 7, 2012).

⁵ *See, e.g., Del. Op. Att'y Gen.* 18-IB50, 2018 WL 6015765, at *2 (Oct. 12, 2018) (finding that this Office has “no authority under FOIA to direct [the public body] with regard to this Office's interpretation of any other Delaware statute”); *Del. Op. Att'y Gen.* 18-IB27, 2018 WL 2994705, *2 (May 31, 2018) (finding that the school district did not violate FOIA when it provided access to the public records and declining to determine whether those records constituted an accurate portrayal of the district's revenue pursuant to separate statutory authority); *Del. Op. Att'y Gen.* 96-IB28, 1996 WL 517455, at *2 (Aug. 8, 1996) (“To the extent you allege that Sussex County has not complied with the requirements of 9 *Del. C.* Section 6921, that matter is beyond the jurisdiction of this office and is not addressed here.”).