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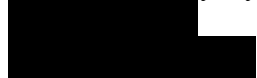
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB39

July 15, 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

DOI received a FOIA request from you on May 13, 2019, seeking a number of items on two handwritten pages, including requests for “investigation and formal hearing per De Reg’n 907 Re: 4/25/19 Reply,” information about the chain of custody, insurance policies issued in 1951, and records and information regarding a certain life insurance company.¹ In addition, you asked for “time stamped copies of this filing and the envelope mailed in” and all “resulting” letters, faxes, emails, and notes “it” generates.² DOI issued an interim response to your request on June 3, 2019, stating that the request had been “submitted to legal counsel and is in review” and stating that the “legal review may take up to another thirty (30) business days.”³

¹ Petition (quoted in original format); Response.

² Response.

³ Petition.

This Petition followed, in which you ask this Office to investigate this matter, as DOI failed to send you “time stamped copies of your filing, [or] envelope” and did not provide the “resulting” letters, notes, emails, faxes, and texts.⁴ Further, you argue that “their reply for legal counsel review is a tactic they’ve used many times to delay FOIA compliance.”⁵ You allege that your request for records was “not complex.”⁶

DOI responded through counsel on June 17, 2019 (“Response”). DOI asserts that it sent you a receipt letter on May 17, 2019 with a copy of the date-stamped envelope and a copy of your FOIA request, and thus you have received the “functional equivalent” of what you requested.⁷ DOI further argues that its response is appropriate under 29 *Del. C.* § 10003(h)(1), which permits a public body to advise that additional time is needed for legal advice and to provide a good faith estimate of how much additional time is needed to fulfill the request. DOI asserts that your claim related to the propriety of its response letter is not ripe, as FOIA allows a petition to be submitted when a FOIA has occurred or is about to occur, and a denial in this matter has not occurred. DOI contends that your requests themselves may not be appropriate, as they are comprised of questions and requests to which DOI has previously responded on several occasions. Finally, DOI states that you have filed two petitions against DOI within two weeks and have submitted at least fourteen requests since the Deputy Commissioner’s appointment, six of those requests relating to her personally. On this basis, DOI alleges that your requests do not relate to the purposes of FOIA and note these issues in light of the administrative burden being placed on DOI.

DISCUSSION

The Petition raises the following two issues: 1) whether DOI violated FOIA by failing to provide time-stamped copies of the filing and envelope or the “resulting” letters, notes, emails, faxes, and texts “it” generates as you requested; and 2) whether DOI’s interim response advising you that additional time was needed for legal review violated FOIA.

First, you allege DOI violated FOIA because you have not received the time-stamped copies of your filing or envelope or any records responsive to your request for “resulting” letters, notes, emails, faxes, and texts “it” generates. DOI has not provided a final response to your requests and instead advised of its need for additional time for review; thus, this matter is not ripe for our consideration.⁸

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Response.

⁸ In its Response, DOI represents that in accordance with its standard protocol, it provided a letter acknowledging receipt of your request enclosing a copy of your FOIA request and the date-

Second, the Petition alleges that DOI's interim response stating that additional time is needed for legal review is a "tactic" to delay FOIA compliance. However, FOIA expressly permits a public body to advise a requesting party that "additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived."⁹ FOIA further provides that "[i]f access cannot be provided within 15 business days, the public body shall cite 1 of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request."¹⁰ DOI advised you of the need for additional time for legal review, providing a good faith estimate of the time for such review. Therefore, we find that DOI did not violate FOIA by advising of its need for additional time for legal review in its interim response.

CONCLUSION

For the reasons set forth above, we conclude 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

stamped envelope in which the FOIA request was received. As evidence thereof, DOI enclosed copies of these records with its Response, on which you were carbon copied.

⁹ 29 *Del. C.* § 10003(h)(1).

¹⁰ *Id.*