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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 19-IB66

November 26, 2019

VIA EMAIL

Mr. Richard Stifter
The Claims Center
P.O. Box 47604
Plymouth, MN 55447
Richard.stifter@theclaimscenter.com

RE: FOIA Petition Regarding the City of Wilmington

Dear Mr. Stifter:

We write in response to your correspondence alleging that the City of Wilmington (“City”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). 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 with regard to your records request. For the reasons set forth below, we conclude that the City has not violated FOIA as alleged in your Petition.

BACKGROUND

On September 10, 2019, you submitted a FOIA request to the City for “the certificate of liability insurance for your contractor . . . that covers the date of 12/12/2017.”¹ Noting that the contractor allegedly struck an underground cable, the request also stated that efforts to contact the contractor “have not brought resolution to this claim.”² The City denied the request on October 22, 2019 stating that the FOIA process is not intended to be used “as a means for litigants to avoid the discovery process, or to advance a litigation position.”³ In response, you stated that you have

¹ Petition.

² *Id.*

³ *Id.*

the right to obtain this document to “establish liability with their insurance company.”⁴ You asked the City to cite an exemption if it believes the record is exempt under FOIA and to describe available appeal procedures. The City responded again, noting that your request was denied pursuant to *McBurney v. Young*, insofar as you are not a Delaware citizen and advising you to consult your legal counsel regarding available appeal procedures. This Petition followed, challenging the City’s denial as improper.

On November 4, 2019, the City, through its counsel, submitted a letter (“Response”) asserting that the City properly denied your FOIA request. The City asserts that the right of access to public records in Delaware’s FOIA statute is applicable to Delaware citizens only and your emails indicate you are a third-party claims administrator with a mailing address in Minnesota. As such, the City contends that it properly denied your request.

DISCUSSION

One primary goal of Delaware’s FOIA statute is to grant citizens access to public records.⁵ Consistent with *McBurney v. Young*,⁶ our Office interprets Delaware’s FOIA statute to apply to Delaware citizens only, thereby permitting a public body to deny a FOIA request solely because it is submitted by a non-citizen of Delaware.⁷ Here, the only evidence in the record indicates that you represent a third-party claims administrator with a mailing address in Minnesota. Accordingly, we conclude that the City’s denial of your request did not violate FOIA.⁸

⁴ *Id.*

⁵ *See 29 Del. C. §§ 10001, 10003(a).*

⁶ 569 U.S. 221 (2013) (determining that Virginia’s citizens-only FOIA statute does not violate the Privileges and Immunities Clause or the dormant Commerce Clause of the U.S. Constitution).

⁷ *See Del. Op. Att’y Gen.* 18-IB54, 2018 WL 6591819, at *2 (Dec. 5, 2018); *Del. Op. Att’y Gen.* 18-IB50, 2018 WL 6015765, at *2 (Oct. 12, 2018); *Del. Op. Att’y Gen.* 18-IB18, 2018 WL 2267112, at *1 (Apr. 6, 2018); *Del. Op. Att’y Gen.* 17-IB14, 2017 WL 3426252, at *1 (July 6, 2017); *Del. Op. Att’y Gen.* 16-IB20, 2016 WL 5888776, at *1 (Sept. 30, 2016).

⁸ While we have decided to issue a determination regarding the merits of your claim, we feel compelled to note that 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).

CONCLUSION

Based on the foregoing, it is our determination that the City has not violated FOIA as alleged.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

Aaron R. Goldstein
State Solicitor

cc: John D. Hawley, Assistant City Solicitor, City of Wilmington