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**DEPARTMENT OF JUSTICE**  
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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 19-IB68**

**December 30, 2019**

**VIA EMAIL**

Mr. George X  
Conflict Resolution Mediator  
10,000 Fearless Men and Women of Delaware, LLC  
[brogeorgex@gmail.com](mailto:brogeorgex@gmail.com)

**RE: FOIA Petition Regarding New Castle County**

Dear Mr. X:

We write in response to your correspondence alleging that New Castle County (“County”) 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 County has not violated FOIA as alleged in your Petition.

**BACKGROUND**

On November 6, 2019, you submitted a FOIA request to the County for a copy of the following documents: “County Records 911 System for [a street address], Delaware City, Delaware 19706 including any and all information indicating that this address and [an individual] has been ‘flagged.’”<sup>1</sup> You state that the address is your property and it is listed under your former name. Additionally, the request states you were informed that your property was “flagged” due to past criminal convictions. On November 13, 2019, the County provided you with redacted records of 911 calls involving the identified address and waiving all fees for these records. The County also denied your request for flagged information, as this is “cautionary information instructing first responders as to any potential dangers regarding said address . . . [and] this confidential information is not for public release via the Freedom of Information Act.”<sup>2</sup> This Petition followed.

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<sup>1</sup> Petition.

<sup>2</sup> *Id.*

The Petition challenges the County’s response, stating that the County’s response refused to provide the requested information, “pursuant to some *unidentified* provision” of FOIA.<sup>3</sup> Additionally, the Petition asserts that the requested information is within the definition of public records available under FOIA.

On December 10, 2019, the County, through its counsel, replied to the Petition (“Response”). The County asserts that your request was properly denied pursuant to 29 *Del. C.* § 10002(l)(17). In support of its position, the County points to Attorney General Opinion No. 05-IB19 and notes that this FOIA exemption also applies to information maintained to “prevent, mitigate, or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety.”<sup>4</sup> The County states that the flagged information you seek provides information about “known dangers associated with a premise or person and allow[s] law enforcement to take safety precautions when responding to a call for service,” and flags “may include warnings and response strategies.”<sup>5</sup> As this information is maintained in 911 records to “aid law enforcement response for calls for service,” and the release of such information would endanger the safety of law enforcement officers and neighboring residents, the County asserts this request was properly denied under Section 10002(l)(17).<sup>6</sup>

## **DISCUSSION**

The Petition first alleges the County’s response is deficient for failing to identify a specific FOIA provision. When denying a request in full or in part, FOIA requires a public body to provide a reason for its denial.<sup>7</sup> However, a specific Code citation is not required.<sup>8</sup> Although the County did not include a specific Code section in its response, the County described the reason for withholding the flagged information. Accordingly, we find no violation here.

We next determine whether the County’s reason for withholding the flagged information is permissible under FOIA. Section 10002(l)(17) exempts certain records that “could endanger the life or physical safety of an individual,” including “portions of records assembled, prepared or

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<sup>3</sup> *Id.* (emphasis in original).

<sup>4</sup> Response.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 29 *Del. C.* § 10003(h)(2).

<sup>8</sup> *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, n.37 (Mar. 10, 2017); *Del. Op. Att’y Gen.* 16-IB02, 2016 WL 1072888, at \*2 (Jan. 14, 2016).

maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety,” including “[s]pecific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments or to the response or deployment plans.”<sup>9</sup> The County represents that the “flagged” information maintained in the 911 system contains specific warnings and response strategies that aid law enforcement in responding to a particular address and that the disclosure of flagged information may endanger the safety of neighboring citizens and the responding officers. Based on these representations, we find that the County properly asserted the 29 *Del. C.* § 10002(l)(17) exemption in these circumstances.

### **CONCLUSION**

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

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

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Aaron R. Goldstein  
State Solicitor

cc: Jordan Perry, Assistant County Attorney

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<sup>9</sup> 29 *Del. C.* § 10002(l)(17).