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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 20-IB03

January 14, 2020

VIA EMAIL

Ms. Laura Allen
Lallen175@comcast.net

RE: FOIA Petition Regarding the Division of Public Health of the Delaware Department of Health and Social Services

Dear Ms. Allen:

We write in response to your correspondence alleging that the Division of Public Health in the Delaware Department of Health and Social Services (“DPH”) 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 DPH has not violated FOIA as alleged.

BACKGROUND

On December 4, 2019, DPH received your FOIA request seeking the following records: “all animal control complaints evidence including complaintee name and address, documentation and video recorded evidence for the above referenced address.”¹ DPH denied the request, citing 29 *Del. C.* § 10002(1)(3), which exempts investigatory files compiled for civil or criminal law enforcement. DPH stated its Office of Animal Welfare “has the authority to investigate complaints against individuals pursuant to 16 *Del. C.* Chapter 30F, subchapters III, IV, and V.”² DPH further noted that the complaints are confidential due to the compelling interests in protecting informants and complainants. This Petition followed, asking our Office to review this request in the interest of public safety.

DPH’s counsel responded to the Petition on December 17, 2019 (“Response”). DPH contends that its response to your FOIA request was appropriate, as the requested documents are

¹ Petition (quoted in original format).

² *Id.*

not public records under 29 *Del. C.* § 10002(1)(3). DPH alleges that its Office of Animal Welfare “enforces criminal laws and civil violations,” and that the complaints are exempt as investigatory files compiled for civil or criminal law enforcement purposes, noting the “addresses of the complainants, as well as documentary and video evidence, are components of those investigatory files.”³ DPH states that the “personally identifiable information of complainants are recorded in response to civil and criminal complaints which the Division investigates” and that releasing these complaints “would result in a public reluctance to contact the Division to report animal cruelty and animal control issues.”⁴ Finally, DPH asserts that the evidence it collects for these investigations is also exempt from disclosure, given that this evidence is associated with, and may be used in, ongoing civil and criminal matters.

DISCUSSION

A public body has the burden to justify its denial of a request for records.⁵ DPH’s Office of Animal Welfare is obligated to enforce certain animal welfare laws and has denied your request pursuant to 29 *Del. C.* § 10002(1)(3).⁶ Under this exemption, investigatory files compiled for civil or criminal law enforcement, including complaints and the evidentiary records compiled in the investigation, are exempt from disclosure under FOIA.⁷ The exemption attaches “as early as the first correspondence that led to the investigation” and survives the conclusion of any resulting investigation.⁸ DPH’s counsel represents that the complaint, the complainant’s name and address, and evidentiary records you seek are part of its investigatory files that its Office of Animal Welfare compiled for its law enforcement purposes. As such, DPH properly denied your request pursuant to 29 *Del. C.* § 10002(1)(3).

³ Response.

⁴ *Id.*

⁵ 29 *Del. C.* § 10005(c).

⁶ 16 *Del. C.* ch. 30F.

⁷ See, e.g., *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *2-3 (Del. Ch. Nov. 20, 1980); *Del. Op. Att’y Gen.* 17-IB47, 2017 4652343, at *1 (Sept. 22, 2017) (determining that the information regarding the complainant who reported a potential violation to DelDOT was exempt under 29 *Del. C.* § 10002(1)(3)); *Del. Op. Att’y Gen.* 17-IB23, 2017 3426263, at *8 (July 14, 2017) (deciding that medical records of seized dogs were exempt as investigatory files).

⁸ *Del. Op. Att’y Gen.* 17-IB23, 2017 3426263, at *8 (citing *News-Journal Co.*, 1980 WL 3043, at *2-3).

CONCLUSION

Based on above, it is our determination that DPH has not violated FOIA as alleged.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Joanna S. Suder, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General