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

**Attorney General Opinion No. 20-IB07**

**February 24, 2020**

**VIA EMAIL**

Mr. Kohl Harrington  
29201 Heathercliff Rd. #1205  
Malibu, CA 90265  
[kohl@harringtonfilms.com](mailto:kohl@harringtonfilms.com)

**RE: FOIA Petition Regarding the Delaware Department of Agriculture**

Dear Mr. Harrington:

We write in response to your correspondence alleging that the Delaware Department of Agriculture (“DDA”) 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 requests. For the reasons set forth below, we conclude that the DDA has not violated FOIA as alleged in your Petition.

**BACKGROUND**

On January 6, 2020, you submitted two FOIA requests to the DDA indicating your mailing address in California. The first request sought all email records of a certain DDA employee for the month of November 2019 pertaining to the keyword, AAFCO; the second request sought a digital record showing all FOIA requests received and processed by the DDA from January 1, 2019 to November 30, 2019. The DDA denied both requests on January 27, 2020, stating “[y]ou do not appear to be a Delaware citizen, therefore you do not appear to have the right to demand access to public records under FOIA.”<sup>1</sup> This Petition followed, challenging the DDA’s denial as improper. You allege that your website educates consumers and retailers in Delaware, and as the

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<sup>1</sup> Petition.

DDA “participates in interstate commerce lawmaking functions behind closed doors and with the active participation of corporations they’re supposed to regulate, the information [you are] requesting only helps provide transparency for citizens who are at stake.”<sup>2</sup>

## DISCUSSION

One primary goal of Delaware’s FOIA statute is to grant citizens access to public records.<sup>3</sup> Consistent with *McBurney v. Young*,<sup>4</sup> 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.<sup>5</sup> The only evidence you submitted into the record indicates that you are not a citizen of the State of Delaware.

## CONCLUSION

Accordingly, it is our determination that the DDA has not violated FOIA as alleged.<sup>6</sup>

Very truly yours,

/s/ Alexander S. Mackler

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Alexander S. Mackler  
Chief Deputy Attorney General

cc: Andrew Kerber, Deputy Attorney General  
Dorey Cole, Deputy Attorney General

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

<sup>3</sup> *See* 29 *Del. C.* §§ 10001, 10003(a).

<sup>4</sup> 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).

<sup>5</sup> *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 \*2-6 (Sept. 30, 2016).

<sup>6</sup> 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).