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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 20-IB14

April 6, 2020

VIA EMAIL

Scott Becker
scottjbecker@outlook.com

RE: FOIA Petition Regarding the State of Delaware State Police

Dear Mr. Becker:

We write in response to your correspondence alleging that the State Bureau of Identification of the Delaware State Police (“DSP”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) in connection with your request for records. We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 regarding whether a violation of FOIA has occurred or is about to occur. As discussed below, we find no basis to conclude that DSP violated FOIA as alleged.

BACKGROUND

On February 27, 2020, DSP received your request for “[t]he annual report produced by SBI in accordance with Title 11, Chapter 5, Section 1448A(i) for calendar year 2019.”¹ This subsection states the following:

The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report including the number of inquiries made pursuant to this section and § 1448B of this title for the prior calendar year. Such report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or

¹ Petition.

transferee was prohibited from receipt or possession of a firearm pursuant to §§ 1448 and 1448B of this title or federal law.²

DSP responded on March 6, 2020, stating that it has no responsive records because “DSP/SBI closed down their Firearms Transaction Approval Process (FTAP) unit approximately five or six years ago when it was determined that the work was redundant with checks performed through the National Instant Criminal Background Check System (NCIS).”³ Further, DSP noted it “does not perform any duties associated with the purchase or transfer of firearms.”⁴

This Petition followed, challenging DSP’s response that no records exist. Specifically, you argue that 11 *Del. C.* § 1448A(i) requires DSP to create this firearms report, and 2011 legislation only renumbered this subsection. You therefore conclude “[e]ither the SBI is not following the law, or [the FOIA Coordinator] refuses to release the information I requested.”⁵

On March 16, 2020, DSP’s counsel replied to your Petition by letter (“Response”), asserting that DSP has fulfilled its obligations with respect to your FOIA request insofar as it has no responsive records to provide. DSP contends that determinations of statutory compliance are outside this Office’s jurisdiction.

DISCUSSION

FOIA requires a public body to provide citizens with reasonable access to public records.⁶ Your request sought a firearms report purportedly required by 11 *Del. C.* § 1448A(i). However, DSP’s legal counsel denies that DSP has any existing records responsive to your request, as DSP no longer performs these duties related to the FTAP. Because DSP’s legal counsel represents the report you seek does not exist, we accept this representation and find no violation of FOIA.⁷

² 11 *Del. C.* § 1448A(i).

³ Petition.

⁴ *Id.*

⁵ *Id.*

⁶ 29 *Del. C.* § 10003(a).

⁷ See, e.g., *Del. Op. Atty. Gen.* 19-IB27, 2019 WL 4538313, at *2 (May 29, 2019); *Del. Op. Atty. Gen.* 15-IB14, 2015 WL 9701645, at *3 (Dec. 29, 2015); *Del. Op. Atty. Gen.* 07-IB11, 2007 WL 4732794, at *2 (May 10, 2007); *Del. Op. Atty. Gen.* 05-IB19, 2005 WL 2334347, at *5 (Aug. 1, 2005).

The FOIA statute limits this Office to determining whether a violation of FOIA has occurred or is about to occur.⁸ In the FOIA petition process, the General Assembly did not confer jurisdiction on this Office to determine whether any law other than FOIA has been violated.⁹ Thus, the determination of whether 11 *Del. C.* § 1448A(i) obliges DSP to publish this firearms report is outside the scope of this Office’s authority.

CONCLUSION

For the reasons set forth above, we find that DSP did not violate FOIA as alleged in the Petition.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Joseph C. Handlon, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁸ 29 *Del. C.* § 10005(e).

⁹ See, e.g., *Del. Op. Att’y Gen.* 18-IB50, 2018 WL 6015765, at *2 (Oct. 12, 2018) (finding that this Office has “no authority under FOIA to direct [the public body] with regard to this Office’s interpretation of any other Delaware statute”); *Del. Op. Att’y Gen.* 18-IB27, 2018 WL 2994705, *2 (May 31, 2018) (declining to determine whether certain records constituted an accurate portrayal of the school district’s revenue pursuant to separate statutory authority); *Del. Op. Atty. Gen.* 96-IB28, 1996 WL 517455, at *2 (Aug. 8, 1996) (“To the extent you allege that Sussex County has not complied with the requirements of 9 *Del. C.* Section 6921, that matter is beyond the jurisdiction of this office and is not addressed here.”).