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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 20-IB15

April 8, 2020

VIA EMAIL

Julie Nay
juliecnay@gmail.com

RE: FOIA Petition Regarding New Castle County

Dear Ms. Nay:

We write in response to your correspondence alleging that New Castle County 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. Your Petition alleges that the County failed to respond to your FOIA request sent on January 22, 2020 seeking records of your phone calls to police. The County Attorney replied to your Petition, stating the County responded to your request via email on January 23, 2020 with the requested records but the email address contained a mistake so the email was not delivered. The County attached a copy of this misdirected email and your requested documents, noting you also would be provided with these records.

FOIA requires a public body to respond to a request within fifteen business days or advise of the need for additional time in compliance with the statutory requirements.¹ The County

¹ A public body must "respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof, either by providing access to the requested records, denying access to the records or parts of them, or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived." 29 *Del. C.* § 10003(h)(1). "If access cannot be provided within 15 business days, the public body shall cite 1 of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request." *Id.*

mistakenly typed your email address, thereby failing to send you a response within the requisite timeframe. The County states it has now remedied this error by sending you the requested records.

As such, we determine that the County has not violated FOIA, and there is no need for additional remediation.² We encourage the County to carefully monitor the delivery of its responses in the future.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved by:

/s/ Aaron R. Goldstein

Aaron R. Goldstein
State Solicitor

cc: Wilson B. Davis, County Attorney

² See *Del. Op. Att’y Gen.* 19-IB38, 2019 WL 4538324, at *3 (July 8, 2019) (finding no FOIA violation when a petitioner alleged the public body’s mistaken use of a previous address constituted an “intentional delay tactic in violation of FOIA”).