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

**Attorney General Opinion No. 20-IB17**

**April 8, 2020**

**VIA EMAIL**

Jeffrey Clouser  
[Jclouser1@gmail.com](mailto:Jclouser1@gmail.com)

**RE: FOIA Petition Regarding the Delaware State Police**

Dear Mr. Clouser:

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.

On January 30, 2020, DSP received your request for “the complete and unredacted Delaware State Police Initial Crime Report and Supplemental Report of mine, Jeffrey A. Clouser, dated February 23, 2009.”<sup>1</sup> DSP acknowledged receipt of the request on January 31, 2020, stating your request “has been sent for legal review” and it would “provide an additional update in approximately 15 business days.”<sup>2</sup>

This Petition followed on March 9, 2020. Pointing to a previous Attorney General Opinion, you allege that DSP, for the second time, missed its statutory deadline to provide a response to your request. You note that even if our Office merely found that DSP missed the deadline, it has

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<sup>1</sup> Petition.

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

“no effect on [DSP’s] pattern of ignoring statutorily defined deadlines.”<sup>3</sup> Instead, you ask for this Office’s assistance in obtaining the requested reports from DSP. On March 16, 2020, DSP’s counsel replied to your Petition by letter (“Response”). DSP contends that it complied with FOIA, as the January 31, 2020 acknowledgment advised that additional time was needed, stating a permitted reason for the additional time and providing a good faith estimate of how much additional time was needed to fulfill the request. Furthermore, on the same day your Petition was filed, DSP denied your request, asserting the investigatory files exemption, the pending or potential litigation exemption, and 11 *Del. C.* ch. 94. Finally, DSP points out that you made the same request last year and this Office’s previous decision, Attorney General Opinion No. 19-IB37, demonstrates that you again seek the same document.

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.<sup>4</sup> However, since the filing of your Petition, DSP provided you with a response to your request. As such, we find

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<sup>3</sup> *Id.*

<sup>4</sup> 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.*

that your claim disputing the timeliness of DSP's response is moot.<sup>5</sup> However, DSP is cautioned to provide timely communications in the future.<sup>6</sup>

Very truly yours,

/s/ Alexander S. Mackler

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Alexander S. Mackler  
Chief Deputy Attorney General

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

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<sup>5</sup> See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017) (“[T]he Court finds that any claimed violation regarding the Sample E-mails is moot because Appellants already possess them.”); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at \*13 (Del. Ch. May 19, 1994) (in response to plaintiffs’ request for a declaration that the Board wrongfully denied them timely access, stating “[b]ecause the documents that are the subject of [plaintiffs’] FOIA requests were turned over to the plaintiffs on August 13, 1993, that claim is moot”); *Del. Op. Att’y Gen.* 19-IB25 (May 10, 2019) (“Based on this record, it is my determination that the allegations in your Petition are now moot, as DOC has completed its final response to your FOIA request.”); *Del. Op. Att’y Gen.* 18-IB30, 2018 WL 3118433, \*2 (Jun. 7, 2018) (“Based upon the record, it is my determination that your Petition is now moot, as OGov has completed its response to your FOIA request.”); *Del. Op. Att’y Gen.* 18-IB25, 2018 WL 2994703, \*1 (May 15, 2018) (“Based on the facts as presented to this Office, it is our determination that your petition is moot, as the City has provided a response to your April 11 FOIA Request.”); *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at \*2 (Del. Ch. July 27, 1998) (citation omitted)) (finding a challenge to the wholesale denial of a request is moot and noting that a matter “is moot when there may have been a justiciable controversy at the time a matter was commenced, but that controversy ceases to exist prior to the arbiter’s determination.”).

<sup>6</sup> The FOIA statute does not provide this Office with the authority to issue injunctive orders to produce documents. See 29 Del. C. § 10005.