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

**Attorney General Opinion No. 21-IB04**

**March 1, 2021**

**VIA EMAIL**

Mr. Craig O'Donnell  
[dadadata@atlanticbb.net](mailto:dadadata@atlanticbb.net)

**RE: Two FOIA Petitions Regarding the City of Delaware City**

Dear Mr. O'Donnell:

We write in response to your two submissions alleging that the City of Delaware City (the "City") violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA") in regard to your requests for records. We treat your submissions as two Petitions for a determination pursuant to 29 *Del. C.* § 10005 regarding whether a violation of FOIA has occurred or is about to occur and issue this combined opinion to address both Petitions. As discussed more fully herein, we determine that no violation of FOIA occurred as alleged in the Petitions.

**BACKGROUND**

The first submission alleges that the City improperly responded to your requests for records about its community center and for the FOIA log ("First Petition"). On November 26, 2020, you requested "documentation of all expenses associated with the Community Center" for 2019 and 2020, as of November 15, 2020.<sup>1</sup> You stated that "[t]hese might take the form of: 1) a report to the town council or created for the town manager; 2) an expense tracking spreadsheet; 3) all individual bills or invoices; 4) report from the town accounting app; 5) or another form where the vendor and cost are clearly identified."<sup>2</sup> On December 4, 2020, the City provided two reports addressed to the Mayor and City Council, the Annual Financial Summary through June 30, 2020 and the financial report through October 31, 2020, along with a link to the reports online. You

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<sup>1</sup> First Petition.

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

argue this information was untimely and not responsive, as they were only summary reports. This First Petition also alleges that you requested the FOIA log, only to discover from the City Clerk that the City was not keeping a FOIA log; the City later hand-delivered a copy of the FOIA log to you at a City Council meeting. Finally, you argue that your request for the Community Center records was improperly labelled as complete on the log.

The attorney for Delaware City submitted a reply to your First Petition on February 15, 2021 (“First Response”). The City argues that the complaint is unfounded, as the request suggested the response could be in one of several possible forms, including a report to the City Council or created for the City Manager. The City’s attorney states that the City provided the annual Financial Summary through June 30, 2020 and a link for the monthly reports available online. The attorney asserts that these reports include a list of all Community Center expenses for the relevant time period. When you objected to the response, the City offered to review its files and copy the supporting individual invoices or checks for a cost of \$600, which you declined by email dated February 10, 2021. Two days later, the City’s attorney emailed again, setting out three options: 1) you can review the Monthly Finance Reports online; 2) the Finance Manager can review the files and copy all checks/invoices related to the community center at a cost of \$600; or 3) the Finance Manager can highlight the checks in the list at the back of the monthly report that relate to the Community Center at an approximate cost of \$75. The City argues that it timely satisfied your requests for expenses, and even when it became clear you wanted more information than was detailed in the provided report, the City offered to compile the invoices/checks or highlight certain information, even though FOIA does not require it.

Your Second Petition involves a different request for records. The Second Petition explains that you first submitted a request on October 27, 2020 by email to the Mayor and the City Manager, seeking “the rental/lease/use agreements for city properties as of this date, and stating “[y]ou can omit any that have already been provided in response to previous requests.”<sup>3</sup> The City Manager replied that you have an upcoming meeting with the Library Board President and Head Librarian and to address your request to the City’s attorney involved with this meeting. That attorney replied that she is unaware of what leases you have, but there have been no new signed leases returned to her recently. After asking the attorney some follow-up questions without response, you emailed the City Manager reiterating your request was currently in force and asking for the identity of the FOIA Coordinator, as you have received no update on “whether this FOIA request is being handled.”<sup>4</sup> In that email, you refer to your request as “any agreements currently in force,” listing a few examples and stating what contracts can be excluded. The City Manager asked you to complete an official FOIA request form and submit it to the FOIA Coordinator. You then sent an email to the FOIA Coordinator on November 26, 2020 requesting the following:

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<sup>3</sup> Second Petition.

<sup>4</sup> *Id.*

Please provide agreements between PAL and Delaware City town government for use of the community center. Any and all agreements from 2015-2020 inclusive are part of this request. However, each should be provided as soon as it is available.<sup>5</sup>

The City replied on December 4, 2020, sending a copy of the 2020 PAL lease without the exhibits and noting the City possessed no previous PAL leases. You asked for the exhibits on December 10, 2020 and the City provided them the next day.

Based on this exchange, you allege that the City violated FOIA by: 1) providing a response that was untimely, incomplete, and improperly designated as complete on the FOIA log; 2) requiring you to use a certain form to submit a FOIA request; 3) failing to update the City's FOIA website with the correct FOIA Coordinator information; 4) failing to make the .pdf form on its website fillable; and 5) having two different forms for requests available on its website.

The City's attorney submitted a reply on the City's behalf to your Second Petition on February 15, 2021 ("Second Response"). The City contends that your request was for the lease between PAL and Delaware City, not multiple leases. The City asserts that your earlier emails did not constitute FOIA requests, as you did not state the emails were FOIA requests nor did you submit the request one of the ways designated on the website. The City also points out that it did accept your requests by email, as evidenced by the City Manager providing you with an email address to contact the FOIA Coordinator. The City states that it accepts requests by online portal, in person, or mail on the City's form and argues that your communications "represent the exact reason why random e-mails cannot possibly constitute a FOIA request."<sup>6</sup> As the earlier requests were not FOIA requests, the City states that its response to your November 30, 2020 request for one lease was satisfied on December 4, 2020, meaning its response was timely and complete.

## **DISCUSSION**

### *First Petition*

This First Petition raises two issues for consideration: 1) whether the responses from the City to your Community Center requests were timely and responsive in terms of its level of detail; and 2) whether the City violated FOIA by failing to maintain its FOIA log and by erroneously marking the Community Center requests on the log as closed. We address each issue below.

With respect to the first issue, you asked for documentation of the expenses associated with the Community Center for 2019 and 2020. You suggested that this information may take one of several forms, including a report sent to the City Council. The City supplied the information in the form of financial summary reports to the City Council, which the attorney for the City notes

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<sup>5</sup> *Id.*

<sup>6</sup> Second Response.

“included a list [of] all Community Center expenses for the requisite time period.”<sup>7</sup> This was one of the possible forms you denoted in the request.

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.”<sup>8</sup> The City supplied this report within the fifteen business days required by FOIA. In these circumstances, we find no evidence that a violation of FOIA occurred as alleged.

With regard to the second claim that the City failed to maintain a FOIA log, the City responded that it has a FOIA log and provided it to you. A copy of this log was provided with the Petition.<sup>9</sup> As such, we find that no controversy exists, and this claim is dismissed as moot.<sup>10</sup> As we find no violation in the City’s completion of the Community Center request, we see no basis for your claim that the City erred in entering this request as complete on the FOIA log.

### *Second Petition*

The Second Petition raises several issues for consideration: 1) whether the City’s response to your request was untimely, incomplete, and improperly designated as complete on the FOIA log; 2) whether the City’s request to fill out a certain form violated FOIA; and 3) whether certain aspects of the City’s FOIA website were improper, including the FOIA Coordinator information, the availability of multiple request forms, and the .pdf form not being a “fillable” document. We address each issue below.

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<sup>7</sup> *Id.*

<sup>8</sup> 29 *Del. C.* § 10003(h).

<sup>9</sup> Although this issue was not raised in the Petitions, we note the City may want to review its log for compliance with the statute. The FOIA log is required to include for each FOIA request “at a minimum, the requesting party’s contact information, the date the public body received the request, the public body’s response deadline, the date of the public body’s response (including the reasons for any extension), the names, contact information and dates of correspondence with individuals contacted in connection with requests, the dates of review by the public body, the names of individuals who conducted such reviews, whether documents were made available, the amount of copying and/or administrative fees assessed, and the date of final disposition.” 29 *Del. C.* § 10003(g)(3).

<sup>10</sup> *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, \*1 (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.”).

The resolution of this first issue depends on which of your communications constituted a proper FOIA request. The City has an online portal for receiving FOIA requests and a .pdf form that may be returned to the City, and the website identifies its FOIA Coordinator who serves as the point of contact for FOIA requests.<sup>11</sup> Your October 27, 2020 email did not utilize the provided forms; was emailed to the Mayor and City Manager, not to the identified FOIA Coordinator; and did not indicate in any way that it was a FOIA request. Every email sent to a public body asking for information is not a FOIA request.<sup>12</sup> The City had no basis to discern this email was intended to be a FOIA request, and we do not believe this October 27, 2020 email triggered the City's FOIA obligations. After further inquiry, the City Manager directed you to fill out a form and send it to the FOIA Coordinator via email. FOIA does not require that the form promulgated by this Office be used for a FOIA request, nor can the public body insist on any specific form if all FOIA requirements are met, but given the back and forth that occurred prior to this time, we do not find it unreasonable that the City asked you to restate the scope of the records requested on one of its forms.<sup>13</sup> After receiving the FOIA Coordinator's email address, you submitted a request to the FOIA Coordinator by email dated November 26, 2020 for the PAL and Delaware City leases, including any former leases from 2015 to 2020.<sup>14</sup> It is this November 26, 2020 request that constitutes a FOIA request and triggered the City's FOIA obligations.

As noted above, a public body must provide a response within fifteen business days, unless the public body advises more time is needed in accordance with the statutory requirements. The City timely responded to your FOIA request for the "agreements between PAL and Delaware City town government for use of the community center" by providing a copy of the requested lease on December 4, 2020, and after your reminder, the City also provided the exhibits on December 11, 2020. As the response and supplemental response were responsive and provided within the statutory timeframe, we find that the City has not violated FOIA in this regard. As we find no violation in this response, we do not have a basis to address your claim that the City erred in designating this response as complete on the FOIA log.

Finally, we address the remaining allegations about the City's website. You claim that the City offered more than one form to fill out on the website. As a request may be submitted in person or by US mail, email, facsimile, or online, multiple forms may be provided on the website.<sup>15</sup> It is not a violation of FOIA to include several forms, nor does FOIA require any .pdf form be

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<sup>11</sup> "FOIA Form," <https://delawarecity.delaware.gov/foia/> (last visited Feb. 26, 2021).

<sup>12</sup> *Del. Op. Att'y Gen.* 19-IB06, 2019 WL 1511361, \*3 (Feb. 13, 2019) (determining that an emailed FOIA request directed to another public body employee, other than the FOIA Coordinator, did not trigger the statutory timeframe for a response).

<sup>13</sup> *See* 29 *Del. C.* § 10003(f)(1); *Del. Op. Att'y Gen.* 16-IB07, 2016 WL 2619613, \*2 (Mar. 18, 2016).

<sup>14</sup> Second Petition.

<sup>15</sup> 29 *Del. C.* § 10003(f)(1).

fillable. You also contend that the wrong FOIA Coordinator was noted on the website. FOIA requires that the City identify the FOIA Coordinator on its website and “shall update this information on its website.”<sup>16</sup> As of the date of this Opinion, the name of the FOIA Coordinator is correctly stated on the website.<sup>17</sup> The City is reminded to continue to update this information as required by FOIA and to accept FOIA requests using any form that meets the requirements of the statute.

### **CONCLUSION**

Based on the foregoing, we find no violation of FOIA as alleged in the Petition, but we remind the City to properly maintain its FOIA log, to accept FOIA requests as provided by the FOIA statute, and to timely update its FOIA Coordinator information.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

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Aaron R. Goldstein  
State Solicitor

cc: William J. Rhodunda, Jr., Attorney for Delaware City (via email)

<sup>16</sup> 29 *Del. C.* § 10003(g).

<sup>17</sup> Second Response; “FOIA Form,” <https://delawarecity.delaware.gov/foia/> (last visited Feb. 26, 2021).