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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 21-IB28

October 25, 2021

VIA EMAIL

Jeffrey C. Smith
Coastal Stewards Delaware
jcs@wpa.org

RE: FOIA Petition Regarding the Delaware Department of Transportation

Dear Mr. Smith:

We write regarding your correspondence on behalf of Coastal Stewards Delaware (“CSD”), alleging that the Delaware Department of Transportation (“DelDOT”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) with respect to your records request. We treat this 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.

You individually filed a request with DelDOT on September 15, 2021 for certain records related to small cell permits located north of the Indian River Inlet to the southern border of Dewey Beach. After DelDOT denied your request, a petition was filed on behalf of Coastal Stewards Delaware (“CSD”), signed by four members of that organization. However, the FOIA request at issue did not indicate it was made by, or on behalf of CSD, nor does it mention your position in or relationship with this organization. Indeed, the records request has no reference to CSD at all. Because the party denied access to the requested records is the sole party with standing to challenge a denial and this Petition was brought solely on behalf of CSD and not by you individually, we decline to address the merits of this Petition.¹

¹ See *Del. Op. Att’y Gen.* 21-IB15, 2021 WL 3160273, at *5 (July 2, 2021) (“As a preliminary matter, only the party denied access to the requested records has standing to challenge this denial.”); *Del. Op. Att’y Gen.* 19-IB59, 2019 WL 6047162, at *2 (Oct. 28, 2019) (“Since the statute only provides for filing of a suit by a ‘citizen denied access,’ the right to petition the Attorney General is also inherently limited to the ‘citizen denied access.’”).

Notwithstanding this conclusion, this Office will consider a petition from you personally as an individual if you wish to challenge the denial of your request, if submitted in accordance with the applicable FOIA requirements, including the sixty-day time limitation on filing a petition against a State department that has denied access to records.²

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: George T. Lees, III, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

² See 29 Del. C. § 10005(b) (“Any citizen denied access to public records as provided in this chapter may bring suit within 60 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Notwithstanding the foregoing, a person denied access to public records by an administrative office or officer, a department head, commission, or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in subsection (e) of this section.”); “Delaware Department of Justice Rules of Procedure for FOIA Petitions and Determinations,” <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2019/09/DDOJ-Rules-of-Procedure-for-FOIA-Petitions-and-Determinations.9.26.19.pdf>. (last visited Oct. 19, 2021).