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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 21-IB31

November 22, 2021

VIA EMAIL

John Young
Jyd1988@gmail.com

RE: FOIA Petition Regarding the Christina School District

Dear Mr. Young:

We write in response to your correspondence alleging that the Christina School District 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 more fully herein, we determine that the District has not violated FOIA as alleged in the Petition.

BACKGROUND

On September 24, 2021, you submitted a request for records seeking the amount of expenditures associated with an action item at a District Board of Education meeting. The request asserts that the item had a fiscal impact, but it was not revealed in the documents nor discussed in public and states that this fiscal impact does not violate "any PII concerns or FERPA or HIPAA concerns as [you are] not asking for any information that would violate the law."¹ Finally, the request states that "Christina taxpayers have the right to know how much money is being spent on action items approved by the board."² The District failed to send you a response by the statutory

¹ Petition.

² *Id.*

deadline of fifteen business days. This Petition followed, alleging that the District did not respond within the required timeframe. A week later, you sent our Office an email acknowledging that the District followed up with you to explain the delay and provide a response to your request. You state that the District attempted to send you a valid response that was delayed based on human error, but you do not believe that FOIA grants exceptions based on human error. Further, in exchange for withdrawing this petition, you asked the District to commit to cure its violation by including the fiscal impact of items that have fiscal impact in the future. As the District did not recognize any connection between the two matters, you maintain you are “flummoxed by the seeming posture by the district (through counsel) that they have no interest in supplying this information to the public prior to votes.”³ You ask our Office to find a violation because you did not have a response to your request at the time of the filing of your Petition and argue the subsequent release of the information you requested should not be treated as a mitigating factor in this Office’s consideration of the timing of the response.

The District responded through counsel to your Petition by letter dated November 1, 2021 (“Response”). The District acknowledges that the response to your FOIA request was not sent within the statutory timeframe, but unfortunately, “a mistake was made.”⁴ The District states that it attempted to offer you more information in its response than what was required under FOIA by providing the compiled numbers constituting the amounts of expenditure, despite the settled precedent that FOIA does not require a public body to create a new record or pull together information into an accounting in response to a request for records. The District’s FOIA coordinator mistakenly sent this email to herself within the requisite statutory timeframe. As evidence, the District attached a copy of this September 29, 2021 email addressed to you but emailed to the FOIA coordinator herself and asserts that “this simple email error is no basis to find the District responsible for a violation of FOIA.”⁵

DISCUSSION

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.⁶ The District demonstrated that within five days of receiving your request, the District’s FOIA coordinator

³ Email from John Young to DOJ FOIA Coordinator Tammy LeCates dated Oct. 28, 2021.

⁴ Response.

⁵ *Id.*

⁶ 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 [one] 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.*

inadvertently sent the response intended for you to herself, thereby failing to send you a response within the requisite statutory timeframe. You acknowledged that the District has now remedied this error by sending you a response. As such, we determine that the District has not violated FOIA.⁷ However, we encourage the District to carefully monitor the delivery of its responses in the future.

CONCLUSION

Based on the foregoing, we determine that the District has not violated FOIA as alleged in the Petition.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

Aaron R. Goldstein
State Solicitor

cc: James H. McMackin, III, counsel for the Christina School District

⁷ See *Del. Op. Att’y Gen.* 20-IB15 2020 WL 1977524, at *1 (Apr. 8, 2020) (finding no violation when the County staff mistakenly typed the requesting party’s email address but remedied this mistake by providing a copy of the misdirected response and records); *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 from its records constituted an “intentional delay tactic in violation of FOIA”).