



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX: (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX: (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX: (302) 577-6499

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 21-IB33

December 8, 2021

VIA EMAIL

Matthew Bittle
Mbittle21@gmail.com

RE: FOIA Petition Regarding the City of Wilmington

Dear Mr. Bittle:

We write in response to your correspondence alleging that the City of Wilmington violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). 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 this Petition is now moot.

BACKGROUND

On October 6, 2021 you made a request seeking "all 96-hour water shutoff notices the city has implemented since the start of 2021," and you stated "[s]pecifically, I would like the account number, individual name, address, and debt for each one and in a spreadsheet format if possible."¹ The City responded a day later, noting that the request had been received and an update would be forthcoming. On October 27, 2021, the City responded that your request is still under review, "additional time is necessary," and an update would be provided when available. This Petition followed, in which you state that "[s]uch an ask should, I would think, not require a full calendar month to fulfill." Asking our Office to intervene, you state that you cannot see why this request would take more than fifteen business days.

¹ Petition.

The City's counsel provided a response on the City's behalf on November 17, 2021 ("Response"). The City states that a City employee asked the Law Department to conduct a review because the requested records included potentially sensitive personally identifiable information. The City asserts that because this request required legal review, it was not possible to complete the response within fifteen business days of receipt of the request. The City states that on the fifteenth day following the request, the FOIA coordinator advised you that more time was needed. The City asserts that the request was still under legal review and it was estimated that the review would be complete by November 19, 2021. On November 22, 2021, the City provided a response to your request, denying access to the records pursuant to 29 *Del. C.* § 10002(o)(6) under the right of personal privacy. The City states that this response resolves your allegation that the City's response was untimely and that the City considers the Petition to be moot.

DISCUSSION

FOIA requires a public body to respond to a records request as soon as possible but no later than fifteen business days by denying or granting access to the records, or if more time is needed, by providing a statutorily-acceptable reason for the delay and a good faith estimate of the amount of time needed to respond.² The Petition alleges that your request should have been fulfilled within the statutory timeframe of fifteen business days. Although the City notified you of the need for additional time within fifteen business days, the City failed to provide one of the reasons permitted by the statute to explain the delay and a good faith estimate of the additional time required. The City has since provided a response to your request. Accordingly, we find that the Petition's sole claim regarding untimeliness is now moot.³ However, we caution the City to provide timely communications in compliance with FOIA's requirements in the future.

² 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).

³ 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.* 21-IB01, 2021 559556, at *2 (Jan. 14, 2021); *Del. Op. Att'y Gen.* 19-IB25, 2019 WL 4538311, at *3 (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

CONCLUSION

For the reasons set forth above, we determine that the Petition is considered moot.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

Aaron R. Goldstein
State Solicitor

cc: Robert M. Goff, City Solicitor, City of Wilmington
John D. Hawley, Assistant City Solicitor, City of Wilmington

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, *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.”).