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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 21-IB36

December 22, 2021

VIA EMAIL

Hannah Edelman
Delaware Online, The News Journal
HEdelman@delawareonline.com

RE: FOIA Petition Regarding the Domestic Violence Coordinating Council

Dear Hannah Edelman:

We write in response to your correspondence alleging that the Domestic Violence Coordinating Council (“DVCC”) 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 DVCC has not violated FOIA as alleged in the Petition.

BACKGROUND

On November 3, 2021, you submitted a request for records seeking “any and all documentation of the Domestic Violence High Risk Team’s receipt of and/or decisions made regarding Stephanie L. Gill, who was screened by Smyrna Police Department on 2/2/21 using the Lethality Assessment.”¹ The DVCC denied the request, asserting the records are exempt as investigatory files, criminal files and records, and records pertaining to potential litigation. This Petition followed.

¹ Petition.

The Petition argues that the denial was improper because you believe there is no active investigation or pending litigation and the court records are already public. Also, you allege that the involved parties are deceased, so you do not believe any privacy interests are implicated. You maintain that “as this is a record of a state agency, it should be granted in accordance with FOIA.”²

The DVCC responded through counsel to your Petition by letter dated December 3, 2021 (“Response”). The DVCC explains that it is a state agency created to improve the State’s response to domestic violence and sexual assault. The Domestic Violence High Risk Team is a pilot program currently operating in Kent County only, and this program’s goal is to increase victim safety and offender accountability through a multidisciplinary team by implementing case specific plans to mitigate further damage. To do so, the DVCC states that it reviews a variety of information including victim and offender names, police reports, incident summaries, the offender’s criminal history, the existence of protection from abuse orders, victim concerns, and other pertinent information. The DVCC, through its Fatal Incident Review Team, is also granted the ability to investigate and review all the facts and circumstances of deaths and near deaths resulting from domestic violence. The victim in the case you want access to was killed on April 27, 2021. The DVCC asserts that its documentation, including the receipt and screening decisions, is excluded from FOIA pursuant to 29 *Del. C.* § 10002(o)(3) for criminal investigatory files, 29 *Del. C.* § 10002(o)(4) for criminal files and records, and 29 *Del. C.* § 10002(o)(9) for potential litigation. In addition, the DVCC alleges that the case, which is pending for review by the Fatal Incident Review Team, is statutorily protected from disclosure.

DISCUSSION

The request seeks the documentation of the receipt and the decision made by the DVCC’s Domestic Violence High Risk Team regarding a specific victim. Delaware Code protects the review process of the DVCC, and any records created therein, from disclosure by specifically exempting those records from FOIA.³ As such, we determine that the DVCC did not violate FOIA by declining to grant access to these records.

² *Id.*

³ 13 *Del. C.* § 2105(h) (“The review process, and any records created therein, shall be exempt from the provisions of the Freedom of Information Act in Chapter 100 of Title 29. The records of any such review, including all original documents and documents produced in the review process with regard to the facts and circumstances of each death or near death, shall be confidential, shall be used by the Council only in the exercise of its proper function and shall not be disclosed. The records and proceedings shall not be available through court subpoena and shall not be subject to discovery. No person who participated in the review nor any member of the Council shall be required to make any statement as to what transpired during the review or information collected during the review. Statistical data and recommendations based on the reviews, however, may be released by the Council at its discretion.”).

CONCLUSION

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

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Nicole S. Hartman, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General