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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 22-IB02

February 1, 2022

VIA EMAIL

Amanda Fries
Delaware Online/The News Journal
Afries@delawareonline.com

RE: FOIA Petition Regarding the Delaware Criminal Justice Information System

Dear Ms. Fries:

We write in response to your correspondence alleging that the Delaware Criminal Justice Information System (“DELJIS”) 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 in connection with your records request. As discussed more fully herein, we determine that this matter is now moot.

BACKGROUND

DELJIS operates, manages, and maintains the computer hardware, software, and communication network for the Criminal Justice Information System (“CJIS”), which supports the criminal justice community.¹ On December 22, 2021, you submitted a request to DELJIS for “copies of public records of the number of juveniles criminally charged in 2020 as well as 2021 (through [the] date of when this request is filled).”² You requested that the data be broken down by age and charge, if possible. On January 3, 2022, DELJIS denied this request, stating it did not have any public records responsive to your request. DELJIS asserted that the criminal files and records and criminal investigatory files are exempt from FOIA, and as 11 *Del. C.* ch. 85 and 86

¹ 11 *Del. C.* § 8502; Response.

² Petition.

and 1 Del. Admin. C. § 1300 preclude disclosure, those records are also exempt pursuant to 29 Del. C. § 10002(o)(6), which exempts records that are prohibited from disclosure by statute. In addition, DELJIS stated that FOIA does not require it to compile the requested data from other public records that may exist, convert data into a new format, create programming, or conduct a database search using requested search criteria.

You responded that same day, clarifying that the “crime statistics [you are] requesting are submitted by Delaware law enforcement agencies to the Federal Bureau of Investigation (FBI) annually” and thus, you contend that the data should be readily available, as there is no need to compile data, convert it into a new format or conduct a database search. You provided DELJIS with a link to the online 2019 FBI report, noting the breakdown for those individuals charged under and over 18 years of age. However, you state that the FBI database does not have 2020 and 2021 statistics. You then submitted your Petition.

DELJIS states that its Executive Director called you the day after you filed this Petition to advise that the document you are seeking, which is known as the National Incident Based Reporting System report, is prepared by the Delaware State Police, State Bureau of Identification (“SBI”). DELJIS provided a copy of your subsequent request to SBI and SBI’s January 11, 2022 response, in which SBI affirmed it prepares the document you requested and provided the data in draft form to you as a courtesy, notwithstanding SBI’s assertion that FOIA does not obligate public bodies to provide drafts of public records. SBI noted that if you wish to submit a request for the final data, it would typically be finalized by March and available in April 2022.

In your Petition, you assert that public records responsive to your request exist is supplied by Delaware law enforcement to the Federal Bureau of Investigation annually, as evidenced by FBI’s website containing the 2019 data. As the “statewide keeper of criminal justice data and statistics,” you contend DELJIS is the correct agency from which to seek this data.³ You argue that DELJIS does not have to create or convert data, as you are “simply asking for the same data law enforcement agencies submit to the FBI annually for the years 2020 and 2021 since the federal agency has a two-year lag on the latest statistics.”⁴ In addition, you argue that your request does not seek records of any investigatory files, but criminal statistics. You contend that DELJIS’s reliance on the disclosure provisions for “criminal history record information” to deny access to this data is inappropriate as the statutory definition clearly pertains only to “individual” criminal history records or any other identifiable descriptions and notations, and arrest numbers are required to be made public.⁵

DELJIS, through its legal counsel, responded to your Petition on January 12, 2022 (“Response”). DELJIS argues that it has no control over this report that SBI prepared or over SBI itself, and DELJIS is not obliged by FOIA to contact another entity to obtain records it does not

³ *Id.*

⁴ *Id.*

⁵ *Id.*

control. As you have now received this record from SBI, DELJIS contends this Petition is moot. In addition, DELJIS's counsel asserts that the report you seek does not exist at DELJIS and to fulfill your request, DELJIS would have to create an ad hoc report, which would be time-consuming and burdensome.

DISCUSSION

This request, as clarified by your January 3, 2022 email to DELJIS, is for the 2020 and 2021 juvenile crime statistics which are reported to the FBI annually. After denying your request, DELJIS directed you to SBI, who affirmed it is the public agency that maintains and reports this data to the FBI. You submitted this same request to SBI and despite advising that the final 2020 and 2021 data is not currently available, SBI provided you with the draft version as a courtesy and invited you to resubmit your request for the final data when it is available in April. On this record, we find that this matter is now moot.⁶

CONCLUSION

For the reasons set forth above, we conclude that this matter is now moot.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Lisa M. Morris, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁶ 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.”); *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, *2 (Del. Ch. July 27, 1998) (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.”)).