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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 22-IB11**

**April 18, 2022**

**VIA EMAIL**

Joe Berg  
[Joeberg55@yahoo.com](mailto:Joeberg55@yahoo.com)

**RE: FOIA Petition Regarding the Village of Ardencroft**

Dear Mr. Berg:

We write in response to your correspondence alleging that the Village of Ardencroft violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA") in regard to your records request. 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 your current question is outside the scope of this Office's jurisdiction to opine upon.

**BACKGROUND**

In response to a previous request for records, the Village provided you with a list of the names of the Village's eligible voters. After receiving that record, you made a second request on February 11, 2022 for the "addresses and phone numbers" of the Village's eligible voters. On February 14, 2022, the Village Chairperson declined to provide the information, citing privacy concerns. The Chairperson later asserted that he would not provide further information unless directed by the Village's legal counsel. You then filed this Petition, asserting that the Chairperson has had ample time to speak with the attorney about your request and alleging the Village failed to produce records in violation of Title 15 of the Delaware Code and FOIA.

Counsel to the Village provided a response on March 29, 2022 (“Response”). The Response contends that your request for the addresses and phone numbers of eligible voters was properly denied. The Village Chairperson raised the privacy concerns of releasing this information and noted that this information is publicly available from other sources, like the community directory available to Village residents. The Village contends that, contrary to your assertion, 15 *Del. C.* § 304(h) does not apply to municipal elections. Further, the Village argues it is excluded entirely from the Delaware Code governing municipal elections, 15 *Del. C.* ch. 75. The Village maintains that its obligations regarding elections are governed by the Village’s by-laws, ordinances, and charter.

## **DISCUSSION**

Under FOIA, a public body carries the burden of proof to justify denial of a request for records.<sup>1</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>2</sup> The sole issue for consideration in this Opinion is whether the Village properly denied your FOIA request for the home addresses and phone numbers for the Village’s eligible voters.

Section 10002(o)(6) exempts any “records specifically exempted from public disclosure by statute or common law.” The Delaware Supreme Court has recognized a common law right of privacy, or as it has been described, “the right to be let alone.”<sup>3</sup> However, this right is not absolute.<sup>4</sup> Rather, it is “qualified by the circumstances and also by the rights of others.”<sup>5</sup> In the FOIA context specifically, “we have determined that legitimate privacy claims under Delaware common law must be balanced against the competing need for access to information to further the accountability of government.”<sup>6</sup> “When legitimate privacy rights are implicated under FOIA, we must balance those rights against the competing need for access to information to further FOIA’s primary goals — government transparency and accountability.”<sup>7</sup> It is a fact-specific analysis, but the privacy interest in one’s home address and phone numbers is given substantial weight. In several contexts, this Office has denied access to such personal information, finding that the privacy interest is

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<sup>1</sup> 29 *Del. C.* § 10005(c).

<sup>2</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

<sup>3</sup> *See Barbieri v. News-Journal Co.*, 189 A.2d 773, 774 (Del. 1963) (citation omitted).

<sup>4</sup> *Guthridge v. Pen-Mod, Inc.*, 239 A.2d 709, 714 (Del. Super. 1967).

<sup>5</sup> *Id.*

<sup>6</sup> *Del. Op. Att’y Gen.* 13-IB03, 2013 WL 4239232, at \*3 (July 12, 2013).

<sup>7</sup> *Del. Op. Atty. Gen.* 13-IB06, 2013 WL 6593033, at \*4 (Nov. 20, 2013).

paramount and that allowing access to home addresses and phone numbers does not further FOIA's goals of promoting government accountability.<sup>8</sup>

However, your request seeks the home addresses and phone numbers of the Village's eligible voters. When our Office previously considered a request for a list of felony conviction information that the Department of Elections receives from Superior Court to cross check with the voter registration records, this Office found that the home addresses were releasable, stating "[w]hile disclosure of a person's address may be considered an invasion of personal privacy under certain circumstances, the public availability of a voter's address is essential to the right of a citizen to challenge a voter's qualifications under Delaware law," citing 15 *Del. C.* § 4941.<sup>9</sup> In other words, the fact that the records were made publicly available through another route under Delaware law informed that decision. We do not believe that such an analysis is appropriate here. The Village has presented a colorable argument that the Village is exempt from the Delaware Code requirements for municipal elections. An assessment of the validity of the Village's legal position regarding municipal elections law is required before we are able to issue a determination about public access to voter records possessed by the Village. While we believe, consistent with our precedent, that home addresses and phone numbers do not further government accountability in most cases, we cannot opine on such an issue in the context of your rights to review election records under the Village's laws. Such an analysis is outside the scope of our authority, and this petition process is not the proper route to seek answers to such questions.<sup>10</sup>

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<sup>8</sup> See, e.g. *Del. Op. Att'y Gen.* 09-IB01, 2009 WL 1433466, at \*2 (Feb. 5, 2009) (finding that home addresses and social security numbers in fire school records may be redacted before release, as "there is no legitimate public interest in personal information such as home addresses and social security numbers"); *Del. Op. Att'y Gen.* 06-IB17, 2006 WL 2630107, at \*7 (Aug. 6, 2006) (in considering redaction of public officials' financial disclosures, noted that "[w]e agree that disclosure of personal identifiers like home address and telephone number, e-mail address, user ID number, or password would invade personal privacy and is not essential for government accountability"); *Del. Op. Att'y Gen.* 01-IB17, 2001 WL 1593117, at \*2 (Nov. 19, 2001) ("Disclosing the names and addresses of retirees 'would not appreciably further the citizens' right to be informed about what their government is up to. Indeed, such disclosure would reveal little or nothing about the employing agencies or their activities.'") (citation omitted).

<sup>9</sup> *Del. Op. Att'y Gen.* 00-IB06, 2000 WL 1092969, at \*2 (Mar. 8, 2000).

<sup>10</sup> 29 *Del. C.* § 10005(e) ("Any citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur.").

**CONCLUSION**

For the reasons set forth above, we determine that this issue presented regarding the Village's eligible voter records is outside the scope of this Office's authority.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

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Aaron R. Goldstein  
State Solicitor

cc: Edward B. Rosenthal, Attorney for the Village