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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 22-IB26

August 12, 2022

VIA EMAIL

Erin Markham
erinmarkham@live.com

RE: FOIA Petition Regarding the City of Wilmington

Dear Ms. Markham:

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") in regard to 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 conclude that the City did not violate FOIA as alleged.

BACKGROUND

On June 1, 2022, you sent a request to the City for "an [E]xcel data report of all parking tickets issued within the limits of the City of Wilmington during the period [of] 1/1/2021 – 5/31/2022," including, if applicable, the citation number, date and time of issuance, location, code and violation description, comments, issuing officer, fine amount due, date of appeal, ruling on appeal and date of ruling, date of request for court hearing, date court hearing was processed/filed with the court, date of scheduled court hearing, and date and fine amount paid.¹ The City produced an Excel document in response to your request. This Petition followed, alleging that the spreadsheet is missing certain data you seek, including the date of appeal, ruling on appeal and date of ruling, date of request for court hearing, date court hearing was processed or filed with the

¹ Petition.

court, and date of the scheduled court hearing. Additionally, you argue that you cannot be reasonably expected to interpret this spreadsheet without explanation.

The City's counsel provided a response on July 28, 2022 ("Response"). The City included the affidavit of the City Parking Services Supervisor, who attested that the City has no single record with all the data you requested. In order to provide an Excel spreadsheet with this information, the City staff "would need to review the data extract and manually update the spreadsheet with the additional information [you] requested."² The City maintains that its FOIA obligations were met upon production of the spreadsheet.

DISCUSSION

Under FOIA, a public body carries the burden of proof to justify denying a request for records.³ In certain circumstances, a sworn affidavit may be required to meet that burden.⁴ FOIA requires public bodies to provide reasonable access to existing public records.⁵ Although a public body may provide additional explanation, there is no requirement in FOIA that a public body explain or interpret provided data to a requesting party.

Here, you seek a spreadsheet containing certain data points. The City provided a spreadsheet that included most, but not all, of the data you requested. The City has presented sworn testimony that there is no single record that is fully responsive to your request, and in order to create such a document, the City would have to extract the relevant information and manually update the spreadsheet. FOIA does not require the creation of a new document to respond to a request, and therefore, we find that no violation of FOIA occurred.⁶

² Response, Ex. A.

³ 29 *Del. C.* § 10005(c).

⁴ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

⁵ 29 *Del. C.* § 10003(a).

⁶ See, e.g., *Del. Op. Att'y Gen.* 20-IB12, 2020 WL 1894025, at *3 (Mar. 17, 2020); *Del. Op. Att'y Gen.* 17-IB61, 2017 WL 6569377, at *2 (Dec. 5, 2017); *Del. Op. Att'y Gen.* 17-IB32, 2017 WL 3426272, at *3 (July 25, 2017); *Del. Op. Att'y Gen.* 17-IB02, 2017 WL 955566, at *6 (Feb. 8, 2017); *Del. Op. Att'y Gen.* 06-IB17, 2006 WL 2630107, at *4 (Aug. 21, 2006).

CONCLUSION

For the reasons set forth above, we find that the City did not violate FOIA as alleged.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

Aaron R. Goldstein
State Solicitor

cc: John D. Hawley, Assistant City Solicitor