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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 22-IB32

August 31, 2022

VIA EMAIL

Barbara L. Bullock
Capeview2001@yahoo.com

RE: FOIA Petition Regarding the City of Harrington

Dear Ms. Bullock:

We write in response to your correspondence alleging that the City of Harrington violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA") with respect 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. For the reasons set forth below, we determine that the City did not violate FOIA as alleged in the Petition.

On July 6, 2022, you sent a FOIA request to the City seeking the expenses related to the City Manager's attendance of a New Jersey police expo. On July 27, 2022, you received an email from the City acknowledging receipt of your request. This Petition followed, in which you allege that the City violated FOIA by failing to respond to your request within fifteen business days.

On August 10, 2022, the City, through its legal counsel, answered the Petition ("Response") and included the current FOIA coordinator's affidavit. The City states that your FOIA request was sent to the former FOIA coordinator, who has left City employment. The current FOIA coordinator checks the emails of the former FOIA coordinator regularly to catch any misdirected responses, including the spam folder. In doing this check, the current FOIA coordinator discovered a copy of your request in the spam folder on July 27, 2022. After acknowledging your request that morning, the current FOIA coordinator then responded later in the day, informing you that the City did not have any documentation or expenses regarding the City Manager.

A public body has the burden of proof to demonstrate compliance with FOIA.¹ FOIA mandates that a public body provide a response to a FOIA request within fifteen business days of receipt, unless it provides notice in compliance with the statute that additional time is required to complete a response.² The City, in this instance, provided a copy of the July 27, 2022 email demonstrating that it provided a timely response to your request within fifteen business days. Accordingly, we find that a violation of FOIA did not occur 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: Dianna E. Stuart, Attorney for the City of Harrington

¹ 29 *Del. C.* § 10005(c).

² 29 *Del. C.* § 10003(h)(1) (“The public body shall 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. If access cannot be provided within 15 business days, the public body shall cite [one] of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.”).