



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNCIL
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX: (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX: (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX: (302) 577-6499

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 22-IB35

September 23, 2022

VIA EMAIL

Jack Guerin
Jackguerin7@gmail.com

RE: FOIA Petition Regarding the Office of the Auditor of Accounts

Dear Mr. Guerin:

We write in response to your correspondence alleging that the Office of the Auditor of Accounts (“AOA”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”), in connection with your July 29, 2022 FOIA request. We treat your correspondence as a petition for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we determine that AOA violated FOIA by not providing a timely response to your FOIA request and recommend that AOA provide a response to your FOIA request within 15 business days of this determination.

BACKGROUND

On July 29, 2022, you submitted through AOA’s FOIA portal a FOIA request seeking “any and all policy analyses, reports, or other work products prepared by My Campaign Group, Innovative Consulting, or Christie Gross for the Auditor of Accounts which involve policy work from 2018 to present.”

On August 25, 2022, you filed the instant petition requesting that this Office determine that AOA violated FOIA by failing to respond to your FOIA request. You stated that the FOIA request was now overdue.

On August 25, 2022, this Office requested that AOA provide a response to the allegations by Friday, September 2, 2022. AOA did not respond by September 2, 2022. On September 6, 2022, this Office contacted AOA and gave them an additional two days to respond. AOA did not respond by September 8, 2022 nor any time thereafter.

DISCUSSION

A public body is required to respond to a request “as soon as possible, but in any event within 15 business days after the receipt thereof, by providing access to the requested records, denying access to the records or parts of them, or by advising additional time is needed.”¹ If access is denied to a record in whole or in part, the public body is required to provide a reason for the denial.² If a public body denies a FOIA request, the public body carries the burden of proof to justify the denial of access to its records.³ In certain circumstances, a sworn affidavit may be required to meet that burden.⁴

AOA, as a public body, is required to respond to a FOIA request by denying or granting access to the requested records within 15 business days. Based on the record before this Office, AOA simply did not respond to your FOIA request. AOA also failed to submit a response to your Petition.

Accordingly, we find AOA violated FOIA in its failure to respond to your FOIA request and recommend AOA provide a response to your request within 15 business days of the date of this determination. We caution AOA to monitor its FOIA requests and respond in a timely manner as required by FOIA.

¹ 29 Del. C. § 10003(h). “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.” *Id.*

² *Id.*

³ 29 Del. C. § 10005(c).

⁴ *Judicial Watch, Inc. v. Univ. of Del.*, 2021 WL 5816692, at *12 (Del. Dec. 6, 2021).

CONCLUSION

Based on the foregoing, we determine that AOA violated FOIA by failing to timely respond to your FOIA request, and we recommend that AOA provide a response to your request within 15 business days of this determination.

Very truly yours,

/s/ Alexander S. Mackler

Alexander S. Mackler
Chief Deputy Attorney General

cc: Victoria E. Groff, Assistant Attorney General
Patricia A. Davis, State Solicitor