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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 23-IB16

June 6, 2023

VIA EMAIL

Jack Guerin
jackguerin7@gmail.com

RE: FOIA Petition Regarding the Fort DuPont Redevelopment and Preservation Corporation

Dear Mr. Guerin:

We write in response to your correspondence alleging that the Fort DuPont Redevelopment and Preservation Corporation (“FDRPC”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). We treat this 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 the FDRPC did not violate FOIA by offering you an appointment to inspect the records you requested.

On May 4, 2023, you submitted a request for “copies of all invoices submitted by Saul Ewing following the firm’s selection as FDRPC Counsel in January 2022.”¹ The FDRPC responded about two weeks later, stating that the records “are available for inspection at the Fort DuPont Redevelopment and Preservation office” and asking you to contact the Executive Director to schedule a time to review the records.² This Petition followed, challenging the FDRPC’s response. You allege that this is a new procedure that the FDRPC has implemented and that it violates FOIA’s requirement that citizens have “easy access” to public records. In addition, you contend that compelling you to inspect the records in person violates FOIA’s cost provisions requiring agencies to provide records at no cost if less than one hour of staff time is required to

¹ Petition.

² *Id.*

process the request. If the FDRPC intends to charge fees, you contend that you must be sent a good faith cost estimate in advance.

FOIA states that “it is vital that citizens have easy access to public records in order that the society remain free and democratic.”³ To accomplish this objective, FOIA requires that “all public records . . . be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body.”⁴ FOIA does not require a public body to send copies of the public records to the requesting party.⁵ Accordingly, we find that the FDRPC did not violate FOIA by offering, in response to your FOIA request, the opportunity to inspect the records you requested.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Richard A. Forsten, Counsel to Fort DuPont Redevelopment and Preservation Corporation

³ 29 *Del. C.* § 10001.

⁴ 29 *Del. C.* § 10003(a).

⁵ See *Del. Op. Att’y Gen.* 17-IB58, 2017 WL 5649344, at *3 (Nov. 8, 2017) (“[T]o the extent your Petition alleges that the Register of Wills violated FOIA by failing to send hard copies of the requested records, we note that FOIA does not require public bodies to send records in response to a request.”).