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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 23-IB31

November 13, 2023

VIA EMAIL

Ian Riden
ianandrewriden@gmail.com

RE: FOIA Petition Regarding the Delaware Health Information Network

Dear Mr. Riden:

We write regarding your correspondence alleging that the Delaware Health Information Network (“DHIN”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 (“FOIA”). 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 find that DHIN did not violate FOIA by denying access to the requested records.

BACKGROUND

From September 26, 2023 to October 5, 2023, you submitted six FOIA requests to DHIN for various records related to the registration and enrollment issues in Maryland. The address on these requests was outside of Delaware. DHIN denied this request, stating “FOIA does not require state agencies, including DHIN, to respond to requests from non-residents.”¹ DHIN also objected to the requests on the basis that they seek information protected from disclosure under attorney-client privilege or applicable privileges and that the requests seek answers to questions, rather than public records. This Petition followed.

In the Petition, you contend that denying this request solely based on citizenship is not appropriate in these circumstances. You allege that DHIN operated in Maryland and is in violation of the law, so FOIA’s citizenship requirement should not apply.

¹ Petition.

On October 25, 2023, DHIN, through its legal counsel, replied to the Petition, maintaining its denial was appropriate (“Response”). DHIN argues that you have not claimed citizenship, and the principle that Delaware’s FOIA statute only applies to Delaware citizens is well-settled. DHIN states that because you believe that DHIN acted as a health information exchange in Maryland for a period of time before registering with that State, you argue that DHIN should be required to respond to your requests. DHIN asserts that no such exception exists.

DISCUSSION

The public body has the burden of proof to justify its denial of access to records.² In Attorney General Opinion No. 16-IB20, this Office concluded that “citizen” as used in 29 *Del. C.* 10003(a) refers to a citizen of Delaware and that Delaware’s FOIA statute only guarantees access to public records to citizens of Delaware.³ The factual record indicates, and you do not dispute, that you are not a citizen of Delaware. DHIN does not have a legal obligation to provide access to public records in response to a FOIA request from a noncitizen. Accordingly, we conclude that DHIN’s denial of your FOIA request based on your lack of Delaware citizenship was appropriate.

CONCLUSION

For the foregoing reasons, we determine that DHIN did not violate FOIA by denying access to the requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Scott W. Perkins, General Counsel & Privacy Officer, DHIN

² 29 *Del. C.* § 10005(c).

³ *Del. Op. Att’y Gen.* 16-IB20, 2016 WL 5888776, at *5 (Sept. 30, 2016) (analyzing Delaware’s FOIA statute and the impact of the U.S. Supreme Court case, *McBurney v. Young*, 569 U.S. 221 (2013)); *see also Del. Op. Att’y Gen.* 21-IB11, 2021 WL 2144533, at *2 (May 12, 2021).