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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 24-IB01**

**January 11, 2024**

**VIA EMAIL**

Robert E. Vanella, Coordinating Editor  
Delaware Call  
[re.vanella@gmail.com](mailto:re.vanella@gmail.com)

**RE: FOIA Petition Regarding the Division of Delaware State Police of the Department of Safety and Homeland Security**

Dear Mr. Vanella:

We write regarding your correspondence alleging that the Division of Delaware State Police of the Delaware Department of Safety and Homeland Security (“DSP”) 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 the DSP did not violate FOIA by denying access to the requested records.

**BACKGROUND**

On October 3, 2023, you submitted a request to the Delaware State Police seeking the following records:

1. Names of all law enforcement officers who are actively certified as of the date of this request (or when the request is processed) (“certified officers”). This document may take the form of a roster of certified officers.
2. The current annual salary of each certified officer.
3. The current employing state agency of each certified officer. The current rank of each certified officer.

4. The past employers of each certified officer and job title(s) associated with each such employment.
5. Resumes of each certified officer.
6. A list of all formerly certified officers and their current status (lapsed, suspended, etc.)
7. The age, sex, and race of each certified officer.<sup>1</sup>

On November 3, 2023, the DSP responded. For the first item, the DSP stated it does not have a list of all certified officers in Delaware, merely information about State troopers, and it had no existing list of DSP troopers nor could it readily generate one. Even if the trooper list was available, the DSP stated that it would be exempt under *29 Del. C. § 10002(o)(17)*. Regarding the second item, the DSP asserted it does not have the salaries of all certified officers in the State but referred you to a website known as “Open The Books,” a website listing state employees and their salaries. For the third item asking for the current employing agency and rank, the DSP referred to its response to the first request. Regarding the fourth item seeking past employers and job titles, the DSP referred to its response for the first request and asserted it does not have a database or document with this information for its current employees. For the fifth item, the DSP stated it does not maintain the resumes for all troopers and to the extent it may have resumes, they would be exempt under Section 10002(o)(1). For the sixth item seeking the list of all formerly certified officers and their current status, the DSP referred to its response to the fifth request and also noted that this list would be exempt by Delaware Code, *11 Del. C. ch. 92*. By way of response to the seventh item for the age, sex, and race of each certified officer, the DSP referred to its responses to the fifth and sixth requests. This Petition followed.

In the Petition, you allege that other than the salary information sought in the second item, every item in your request was denied, and the DSP’s denials are overly broad applications of the FOIA statute, which are contrary to the principle that FOIA exemptions are to be narrowly construed. You question the propriety of denying access to the first, third and fourth items under *29 Del. C. § 10002(o)(17)*, as this exemption would not be appropriate to protect privacy of the officers. In addition, you argue that the assertion of the personnel file exemption under *29 Del. C. § 10002(o)(1)* is not appropriate, as resumes are public records under the Delaware court precedent and the seventh item for the age, sex, and race of the officers seeks indirect identifiers, which are not private information. In response to the DSP’s denying the existence of records in the requested format, or having any records at all for a request, you point out that the FOIA statute requires the DSP to make every effort to assist the requesting party in identifying the records and in light of modern capabilities, you believe the DSP should fulfill the requests.

The DSP, through its legal counsel, replied to the Petition, maintaining that its response to the request was appropriate, as it does not maintain some of these records and that it properly cited the exemptions under Sections 10002(o)(1), (6), and (17). In its Response, the DSP provides information regarding other potentially relevant documents that are or will be available. The DSP argues that releasing a full list of DSP officers and biographical information would pose a unique security risk, as some officers serve currently, or will in the future, on undercover or intelligence assignments. The DSP provided two affidavits with its Response, one from the Chief Public Information Officer and the second from the Director of Human Resources. The Chief Public

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<sup>1</sup> Petition.

Information Officer expressly attests that disclosure of the names and biographical information would pose a safety risk, noting an increase in concerning messages from the public through phone calls and social media and the occurrence of an in-person threatening incident at DSP headquarters. In addition, the Chief Public Information Officer attests that “[m]any DSP troopers serve in undercover and other intelligence roles,” and disclosing the identities and the associated information about its troopers would “create a significant officer-safety issue.”<sup>2</sup> The Director of Human Resources asserts under oath that “[d]isclosure of the names of all officers would necessarily include officers who are or will act in an undercover capacity” and “[r]eleasing names of all officers . . . could subject them to potential harassment or danger in the conduct of their official duties and personal affairs.”<sup>3</sup>

## DISCUSSION

The public body has the burden of proof to justify its denial of access to records.<sup>4</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>5</sup> The Petition alleges that the DSP improperly denied six of the seven items in the request, excluding the second item regarding salaries. As a threshold matter, the DSP provided sworn evidence that it does not maintain records of all Delaware law enforcement officers, only records of the DSP troopers, so any requests seeking records of all law enforcement officers, other than DSP troopers, was properly denied.<sup>6</sup>

The first item requested the “[n]ames of all law enforcement officers who are actively certified as of the date of this request (or when the request is processed) (‘certified officers’).”<sup>7</sup> Section 10002(o)(17) applies to seven categories of records that “if copied or inspected, could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual.”<sup>8</sup> One such category consists of “portions of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety,” which are exempt if they fall under one of two subcategories.<sup>9</sup> A subcategory is the “[s]pecific and unique vulnerability assessments or

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<sup>2</sup> Response, Aff. of Chief Public Information Officer dated Nov. 14, 2023.

<sup>3</sup> *Id.*, Aff. of Director of Human Resources dated Nov. 14, 2023.

<sup>4</sup> 29 *Del. C.* § 10005(c).

<sup>5</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

<sup>6</sup> Response, Aff. of Director of Human Resources dated Nov. 14, 2023.

<sup>7</sup> Petition.

<sup>8</sup> 29 *Del. C.* § 10002(o)(17).

<sup>9</sup> *Id.*

specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments or to the response or deployment plans.”<sup>10</sup> The DSP’s primary objectives include assessing vulnerable areas and deploying response plans to prevent, mitigate, or respond to criminal activity, and the identities of the officers, including those officers that are undercover or working in intelligence operations, are essential to these response and deployment plans. Disclosure of these assessments and response and deployment plans pose a safety risk to the involved officers and the public safety of the communities in which the officers operate, especially officers working in undercover or intelligence operations. As such, we determine that the requested list of all DSP troopers is exempt from FOIA under 29 *Del. C.* § 10002(o)(17)(a)(5)(A). As the remaining items in the request that are the subject of this Petition hinge on releasing the identities of the DSP troopers, we determine that the DSP did not violate FOIA by denying access to these remaining records.

In its Response, the DSP supplements its initial response to your request by offering more records, including records outside of its custody, that pertain to the subject matter of the requests but do not pose safety risks. In addition to the previously provided citation to the website, “Open The Books,” the DSP provides the link to the DSP’s website with its published annual reports that contain information about its workforce. In addition, the DSP provides a citation to the Criminal Justice Council’s “Statewide Police Integrity Report” dated November 1, 2021, which contains a list of decertified officers by department or agency for the prior decade. Finally, the DSP states “that while information about officer decertification in Delaware had historically been non-public, recent statutory amendments will soon make particular certification decisions and records publicly available on the websites of the CJC and the Police Officer Standards and Training Commission (the “POST”). *See* 11 *Del. C.* § 8404A(5) (requiring that POST include summaries of certification decisions on its website); and 11 *Del. C.* §§ 9210(a)(3) and 9211 (requiring the posting on CJC website detailed narratives of certain disciplinary decisions and other disciplinary statistical data).”<sup>11</sup> Furthermore, via the DSP counsel’s November 13, 2023 email, the DSP offered to provide you with additional demographic or other statistical information without trooper names.

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<sup>10</sup> *Id.*

<sup>11</sup> Response, p. 3.

**CONCLUSION**

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

Very truly yours,

/s/ Alexander S. Mackler

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Alexander S. Mackler  
Chief Deputy Attorney General

cc: Joseph C. Handlon, Deputy Attorney General  
Dorey L. Cole, Deputy Attorney General