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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 24-IB34

August 28, 2024

VIA EMAIL

Rita M. Carnevale
ritacarnevale@aol.com

RE: FOIA Petition Regarding the City of Wilmington

Dear Ms. Carnevale:

We write in response to your correspondence alleging that the City of Wilmington violated Delaware's 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 determine that the City has not violated FOIA by declining to provide the requested record.

BACKGROUND

On May 20, 2024, you submitted a FOIA request to the City of Wilmington for "a list of all businesses and their addresses within the City of Wilmington that CURRENTLY have a city-installed 15-minute parking sign, more or less for their customers' benefit."¹ After failing to provide a timely response, the City provided a spreadsheet containing a list of all 15-minute parking areas within the City of Wilmington.² This Petition followed. The Petition alleges that the response was untimely. You also contend that the City did not provide the information requested; the spreadsheet does not have addresses or the business names associated with the

¹ Petition.

² *Id.*

parking areas, merely notations you do not understand. For example, one entry stated “Adams Street” and “Delaware SBL, 110’ WS.”³

On August 9, 2024, the City, through its legal counsel, replied to the Petition and provided the affidavit of the Special Projects Coordinator of the City’s Department of Public Works (“Response”). The City notes that the delay in responding was attributable to vacation leave, and the City is implementing safeguards to ensure that timely responses are sent in the future. In addition, the Coordinator attests that the Department of Public Works is the official custodian of records related to on-street parking limitations, and the Department possessed parking time limitation records dating back to 1937 that were dispersed in an index card catalogue, hard copy binder, and partial spreadsheet; the Coordinator compiled these records into a single Excel workbook. The Coordinator further attests that this spreadsheet was provided to you; it gives the locations of the 15-minute parking zones and includes details such as the length of the space, nearest cross street, and which side of the street the space is located, but “[t]hese records do not attribute or notate specific addresses or business names to these records.”⁴ Although the spreadsheet is not exactly what was requested, the City asserts it is not required to create a new document to respond to a request.

DISCUSSION

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁵ The public body has the burden of proof to justify its denial of access to records.⁶ In certain circumstances, a sworn affidavit may be required to meet that burden.⁷ This Petition alleges that the City’s response to your FOIA request was untimely. As the City has replied to this request, the Petition’s claim regarding timeliness is moot.⁸

In this request, you sought a list of businesses, and their addresses, which currently have 15-minute parking. The City provided the sworn statements of the custodian of its parking

³ *Id.*

⁴ Response, Ex. B.

⁵ 29 *Del. C.* § 10003(a).

⁶ 29 *Del. C.* § 10005(c).

⁷ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

⁸ *See, e.g., Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *13 (Del. Ch. May 19, 1994); *Del. Op. Att’y Gen.* 18-IB30, 2018 WL 3118433, at *2 (Jun. 7, 2018); *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at *2 (Del. Ch. July 27, 1998)).

limitation records that its records were compiled into an Excel workbook that included a spreadsheet of the 15-minute parking areas, and those records do not contain the business information you are seeking. As the City provided adequate sworn testimony to support that it does not have the list you requested, we find that the City met its burden to demonstrate that its failure to produce the list you requested is compliant with FOIA.

CONCLUSION

For the foregoing reasons, we conclude that the City did not violate FOIA by declining to provide the requested record.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: John D. Hawley, Assistant City Solicitor