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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 24-IB38

September 24, 2024

VIA US MAIL

Ferdell Harvey
325 E. 5th Street, Apt. 1F
Wilmington, Delaware 19801

RE: FOIA Petition Regarding the Wilmington Housing Authority

Dear Mr. Harvey:

We write in response to your correspondence, alleging that the Wilmington Housing Authority (“WHA”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 (“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 WHA did not violate FOIA by denying access to the records you requested.

BACKGROUND

In October and December 2023, you filed four records requests with the Wilmington Housing Authority, seeking:

1. Compton Towers’ resident Council rules and [regulations] in re-election procedures.
2. Financial disclosure to resident council for 2020, 2021, 2022, and 2023 by WHA.
3. Compton Towers’ resident council receipts that Compton Towers’ resident Council received from Vending Companies throughout

2020 thru 2023 (Caleco Vending Company and A&C Covenant Vending, LLC), on a monthly basis.

4. Full name of Compton Towers' resident Council Treasurer that served from 2020 through 2023 [and] copies of all receipts and withdrawal from the Wilmington, Delaware bank of operations.¹

After requesting judicial intervention through the courts, this Petition was filed. The Petition alleges that you did not receive any response to these requests.

The WHA, through its legal counsel, replied to the Petition and enclosed the affidavit of its Executive Director ("Response"). The Executive Director attests that the Council is comprised of Compton Towers residents elected by other Compton Towers residents. The WHA is the owner/landlord of the Compton Towers apartment building, and the WHA's Resident Services Department provides administrative support to the Compton Towers Resident Council, but the WHA does not maintain or control the Council's documents.

The WHA Executive Director attests that on July 11, 2024, the WHA responded to your four requests, a copy of which was provided with the Response. The WHA Executive Director attests that the WHA Resident Services Chief searched the WHA's relevant resident files for responsive records. Based on this search, the WHA provided complete responses to each of the four requests that included all the document in its possession, custody, and control. Regarding the first request for rules and regulations in reelection procedures, the WHA provided several documents, namely the "Constitution and By-laws Compton Resident Council Wilmington Housing Authority," "Election Process," "Resident Council Election Process," and "Summary of Resident Council Election Process." Regarding the second request for financial disclosures, the Executive Director states under oath that Compton Towers Resident Council did not request any funds from the WHA during this time and therefore, the WHA has no responsive records. For the third request for receipts from two vending companies, the Executive Director attests that the WHA does not receive funds from the vending machines and therefore, has no responsive records to this request. Regarding the fourth request for the name of the Council treasurer and copies of receipts and withdrawals, the Executive Director swears that the position of treasurer was vacant during this timeframe and the WHA does not have the requested receipt and withdrawal documents, as the WHA did not disburse any funds to the Council during this time.

DISCUSSION

In any action brought under Section 10005, the public body has the burden of proof to justify its denial of access to records.² In certain circumstances, a sworn affidavit may be required to meet that burden.³ The WHA provided sworn statements supporting that the WHA searched its

¹ Petition.

² 29 *Del. C.* § 10005(c).

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

records, and other than the records responsive to the first request, no responsive records were located.⁴ We find that the WHA responded to these requests and sufficiently supported that this production of records and denial of access to the remaining requested records was appropriate.

CONCLUSION

For the reasons set forth above, we conclude that the WHA 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: Jennifer M. Kinkus, Esq., Attorney for the Wilmington Housing Authority

⁴ *Id.* at 1012 (“[U]nless it is clear on the face of the request that the demanded records are not subject to FOIA, to meet the burden of proof under Section 10005(c), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”).