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

**Attorney General Opinion No. 24-IB39**

**October 1, 2024**

**VIA US MAIL**

Devin Coleman  
James T. Vaughn Correctional Center  
1181 Paddock Rd.  
Smyrna, Delaware 19977

**RE: FOIA Petition Regarding the Office of the Governor**

Dear Mr. Coleman:

We write regarding your correspondence alleging that the Office of the Governor 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 Governor’s Office did not violate FOIA as alleged in the Petition.

**BACKGROUND**

The Petition alleges that in June 2024, you requested copies of all the responses to your FOIA requests previously submitted to the Governor’s Office, including a request for copies of any sent or received emails relating to individuals sentenced as habitual offenders, or emails which include “habitual” and “offender.”<sup>1</sup> You assert that in response to the June request, the Governor’s Office stated the records were not in the possession of the Governor’s Office, because “the records were those of the prior administration (Jack Markell).”<sup>2</sup> You contend that this response is a violation of 29 *Del. C.* § 10003(j)(1).

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<sup>1</sup> Petition.

<sup>2</sup> *Id.*

## DISCUSSION

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.<sup>3</sup> Section 10003(j)(1) states “[i]f all or any portion of a FOIA request seeks records controlled by the public body but are not within its possession or cannot otherwise be fulfilled by the public body with reasonable effort from the records it possesses, then the public body shall promptly request that the relevant custodian provide the noncustodial records to the public body.” This section does not apply in these circumstances. A “prior administration” is not an entity from which records may be retrieved, nor does FOIA determine the record retention requirements for any public body, including the Governor’s Office.<sup>4</sup> Thus, the Governor’s Office did not violate FOIA by failing to seek records from the previous administration in response to your request.

## CONCLUSION

For the foregoing reasons, we determine that the Governor’s Office did not violate Section 10003(j)(1) in responding to your request.

Very truly yours,



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Daniel Logan  
Chief Deputy Attorney General

cc: Matthew Lintner, Deputy Legal Counsel  
Dorey L. Cole, Deputy Attorney General

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<sup>3</sup> 29 *Del. C.* § 10003(a).

<sup>4</sup> *See, e.g., Del. Op. Att’y Gen.* 17-IB04, 2017 WL 1317846, n. 7 (Mar. 8, 2017) (noting that a matter regarding a public body’s obligation to retain records is outside the scope of FOIA).