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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 24-IB41

October 8, 2024

VIA EMAIL

Branden Moore
bmoorehv@gmail.com

RE: FOIA Petition Regarding Town of Camden

Dear Mr. Moore:

We write in response to your correspondence, alleging that the Town of Camden (“Town”) 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. For the reasons set forth below, we conclude that the Town did not violate FOIA.

BACKGROUND

On August 8, 2024, you submitted a FOIA request to the Town. Specifically, you requested audio and video footage from August 5, 2024 covering: the entire Town Council Meeting that took place that day; the first-floor elevator lobby from 8:30-9:30 pm; and the front parking lot of the Town Hall from 6:45-7:30 pm.¹ The Town did not fulfill your request, instead providing you with

¹ Petition, p. 4.

an explanation that an investigation was conducted and the videos you requested were not retained due to technical issues caused by an old and outdated server system.² This Petition followed.³

On September 18, 2024, the Town, through its legal counsel, responded to the Petition. The Response stated that on August 23, 2024, you picked up a thumb drive from the Town containing audio and video footage of the August 5, 2024 Town meeting.⁴ You were also provided the correspondence you included with your Petition.⁵ The correspondence was from Advantech, who is in charge of the security and cameras on the property at the Town Hall of Camden.⁶ It explained why the Town could not produce the additional audio and video footage requested of the first-floor elevator lobby or the front parking lot.⁷ The Town Manager certified that all the statements made in the Town's Response were true and correct in a sworn and notarized statement included in the Response.⁸

DISCUSSION

In any action brought under Section 10005, the public body has the burden of proof to justify its denial of access to records.⁹ In certain circumstances, a sworn affidavit may be required to meet that burden.¹⁰ The Town provided a sworn statement from the Town Manager affirming that the Town provided the requested audio and video footage of the August 5, 2024, contacted

² Petition, p. 5.

³ To the extent your Petition alleges that Chief Witney coerced you to not file a report against Councilman Dan Woodhall of the Camden Town Council, this Office cannot make determinations of whether statutes other than FOIA have been violated or may be violated. *See, e.g., Del. Op. Att'y Gen.* 21-IB10, (May 4, 2021) (finding that “legality of the FOIA statute and other Delaware statutes...are outside the scope of this Office's statutory authority to opine on”); *Del. Op. Att'y Gen.* 18-IB50, 2018 WL 6015767, at *2 (Oct. 12, 2018) (finding that this Office has “no authority under FOIA to direct [the public body] with regard to this Office's interpretation of any other Delaware statute”).

⁴ Response, p. 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 29 *Del. C.* § 10005(c).

¹⁰ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

the entity in charge of the security and cameras on the property at the Town Hall of Camden and was informed that remaining requested audio and video footage did not exist.¹¹ FOIA does not require a public body to provide a record that does not exist.¹² We find that the Town sufficiently supported its assertions that it provided you one of the records you requested and that the two remaining records do not exist.

CONCLUSION

For the reasons set forth above, we conclude that the Town did not violate FOIA.

Very truly yours,

/s/ Carla A.K. Jarosz

Carla A.K. Jarosz
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gregory A. Morris, Esquire, Attorney for the Town of Camden

¹¹ *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.”).

¹² *Del. Op. Atty. Gen.* 20-IB13, 2020 WL 1894026 (Mar. 30, 2020) (internal citation omitted).