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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 24-IB47

November 6, 2024

VIA EMAIL

James Lamb, Executive Director
Small Business in Transportation Coalition, Inc.
james@truckers.com

RE: FOIA Petition Regarding the Delaware Department of Transportation

Dear Mr. Lamb:

We write regarding your correspondence, on behalf of the Small Business in Transportation Coalition, alleging that the Delaware Department of Transportation (“DelDOT”) 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 DelDOT did not violate FOIA by denying access to the requested records.

BACKGROUND

On September 11, 2024, you, on behalf of the Small Business in Transportation Coalition, submitted a request to DelDOT for the following:

Earlier this month, Alex Leath of the Bradley Law Firm, counsel for the Unified Carrier Registration (UCR) Plan, publicly advised the UCR Plan’s Board of Directors that the UCR Agreement (49 U.S. Code § 14504a – Unified Carrier Registration System plan and agreement) is an “interstate compact” of 41 states.

As you know, an interstate compact is an agreement between or among two or more states of the United States. To become effective, it must be approved by those states’ respective legislatures and,

depending on the subject matter of the compact, consented to by Congress.

The Small Business in Transportation Coalition, Inc. (SBTC) hereby requests any and all documents that would reveal whether or not the Unified Carrier Registration Agreement was ever ratified by your state's legislature to make the UCR Agreement a bona fide interstate compact.¹

DelDOT denied access to the requested records, stating the following:

FOIA provides for access to public records for citizens of the state of Delaware. Accordingly, because you do not appear to be a Delaware citizen, you do not have a guaranteed right under FOIA to access State of Delaware public records. *See* Del. Op. Att'y Gen. 16-IB20 (2016) (finding that the denial of a FOIA request by a non-Delaware citizen was not a violation of FOIA because the word "'citizen,' as used in Section 10003(a), refers to citizens of the State of Delaware."). As the right to access documents pursuant to FOIA is not guaranteed for non-Delaware citizens, DelDOT is denying your request.²

You then followed up with DelDOT, stating that the SBTC is a nonprofit nationwide trade association of 20,000 trucking companies with associational standing and asking if DelDOT would like a list of its Delaware members. Your attorney also replied to this response, requesting reconsideration of the denial and arguing that the SBTC has members in every state, including 87 members in Delaware, and that this request was made on behalf of those Delaware members. The SBTC's counsel further noted that this request violates no other law and is innocuous in nature.

This Petition followed. You state that this request is in the public interest; the SBTC is a nonprofit watchdog group; and this request furthers your "investigation into the legality of the UCR Agreement as a UCR Plan-purported 'interstate compact.'"³ Also, you assert in "furtherance of distinguishing the facts in this request as opposed to the facts in *McBurney v. Young*, [you] are considering filing a formal appeal with Delaware DOT in this instance and may after exhausting administrative remedies request a declaratory judgment in US District Court asking a Federal Judge to compel compliance through court order on the basis SBTC has associational standing as a 'citizen' because [you] have 87 Delaware based members who are citizens."⁴ You argue that the *McBurney* case is not applicable to this request, as this is a request from a nonprofit

¹ Petition.

² *Id.*

³ *Id.*

⁴ *Id.*

organization on behalf of its 20,000 members, which was apparent from the use of your email: james@truckers.com.

DelDOT, through its legal counsel, replied to this Petition (“Response”), arguing that its response was proper, as you did not assert any facts demonstrating that you or the SBTC are citizens of Delaware. DelDOT provided an affidavit from its Director of Community Relations, who also serves as DelDOT’s FOIA coordinator. DelDOT’s FOIA coordinator alleges, under oath, that neither you nor the SBTC identified any members of the SBTC that are citizens of Delaware to establish the claim for associational standing; that the request does not provide a State of Delaware address or other evidence of citizenship; and that the SBTC is not registered with the Division of Corporations to conduct business in Delaware. DelDOT argues that even if evidence of the SBTC’s Delaware members was submitted, the SBTC is not registered to do business in Delaware and thus cannot avail itself of the FOIA statute, including bringing this Petition.⁵ DelDOT further points to an email from the SBTC’s counsel, submitted after the Petition, that indicates the SBTC is only seeking records “evidencing that UCR Agreement language was ratified by [the] state legislature after June 11, 2007, if any, which is required for the UCR Agreement to constitute a bona fide interstate compact.”⁶ DelDOT argues that it is not appropriate to use a FOIA request to seek an answer to a question or a legal opinion from DelDOT about the ratification.

In addition, DelDOT alleges that this request is misplaced; the FOIA coordinator attests that “DelDOT does not maintain a record of all legislation passed by the Delaware Legislature,” and such records must be requested from the Legislature’s FOIA coordinator.⁷ Finally, DelDOT states if the SBTC is found to be authorized to submit this request in Delaware, the identification of responsive records, if any, is estimated to take two hours based on two employees subject to paygrade 16, for a total cost estimate of \$94.28.

DISCUSSION

The public body has the burden of proof to justify its denial of access to records.⁸ In certain circumstances, a sworn affidavit may be required to meet that burden.⁹ In Attorney General

⁵ While we have decided to issue a determination here as a courtesy, we feel compelled to note that as noncitizens, you and the SBTC also may not have the right to utilize the provisions in Section 10005, including the petition process.

⁶ Response.

⁷ *Id.*

⁸ 29 *Del. C.* § 10005(c).

⁹ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

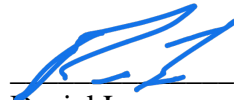
Opinion No. 16-IB20, this Office concluded that Delaware's FOIA statute only guarantees access to public records to the citizens of Delaware.¹⁰

The factual record indicates, and you do not dispute, that neither you nor the SBTC are citizens of Delaware.¹¹ DelDOT does not have a legal obligation to provide access to public records in response to a FOIA request from a noncitizen.¹² Thus, we conclude that DelDOT's denial of your FOIA request based on the lack of Delaware citizenship was appropriate.

CONCLUSION

Accordingly, we determine that DelDOT did not violate FOIA by denying access to the requested records.

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Laurence L. Socci, Esq., Attorney for Small Business in Transportation Coalition, Inc.
George T. Lees, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

¹⁰ *Del. Op. Att'y Gen.* 16-IB20, 2016 WL 5888776, at *5 (Sept. 30, 2016).

¹¹ Although the Petition asserts a claim regarding the SBTC's associational standing, no specific evidence of its Delaware members is presented, and given the narrow scope of this process, such a claim is not appropriate in this forum. 29 *Del. C.* § 10005.

¹² *See, e.g., Del. Op. Att'y Gen.* 21-IB11, 2021 WL 2144533, at *2 (May 12, 2021); *Del. Op. Att'y Gen.* 16-IB20, 2016 WL 5888776, at *5.