



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
CRIMINAL DIVISION (302) 577-8500
DIVISION CIVIL RIGHTS & PUBLIC TRUST (302) 577-5400
FAMILY DIVISION (302) 577-8400
FRAUD DIVISION (302) 577-8600
FAX (302) 577-2610

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB03

January 13, 2025

VIA EMAIL

Jennifer Pawloski
jenpawloski@yahoo.com

RE: FOIA Petition Regarding the Town of Bethany Beach

Dear Ms. Pawloski:

We write in response to your correspondence, alleging that the Town of Bethany Beach 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 Town violated FOIA by failing to engage with you regarding modifying your request.

BACKGROUND

On October 22, 2024, you submitted a request to the Town for "any materials that exist which involve town council members or any town of Bethany Beach employees relating to meetings held on 12/1/23, 12/5/23, 12/7/23, 12/20/23."¹ In addition, you sought "any correspondence between any of the town council members and any US Wind employees from January of 2016 through March of 2024" and "any records, minutes, and any correspondence that involve discussions about offshore wind development, its effects on the town, or anything with US Wind representatives."² On November 15, 2024, the Town supplied a partial response, including

¹ Petition.

² *Id.*

a production of records. The Town did not charge you for this production but noted that it had spent over two hours of administrative staff time to make this production. To complete your request, the Town estimated an additional 11 hours of staff time at a rate of \$60.00 per hour, for a total of \$660.00, would be required. The Town asked you to advise if you wished to proceed with your request.

On November 21, 2024, you contemplated modifying your request, asking the Town to give you a quote for “any communications, emails, memos, messages, minutes relating to anything involving the Association of Coastal Towns (ACT) and [its] members in 2023 and 2024.”³ You followed up on December 5, 2024, after no response was received. This Petition followed, alleging that the Town failed to respond to your request for the modified quote and noting that the initial set of charges was excessive.

The Town, through its legal counsel, replied to the Petition (“Response”), arguing it complied with FOIA. The Town states that you requested “a quote for services to attempt to fully comply with previous FOIA requests.”⁴ The Town attached an email from the Town Clerk explaining the basis for the \$660.00 charge. The Town asserted that this estimated amount is reasonable and if you wish to proceed, you need to submit the amount requested.

DISCUSSION

In any action brought under Section 10005, the public body has the burden of proof to justify its denial of access to records.⁵ FOIA provides that prior to fulfilling any request involving administrative fees, the public body must provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving the records. “Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.”⁶

In this case, the requesting party, after receiving the estimate for the initial request, modified the request and asked for an estimate of those charges. As the requesting party sought to modify the request in accordance with the statute, FOIA requires the Town to engage with a requesting party about the modifications.⁷ Accordingly, we find a violation in this regard and

³ *Id.*

⁴ Response.

⁵ 29 *Del. C.* § 10005(c).

⁶ 29 *Del. C.* § 10003(m)(2).

⁷ *See* 29 *Del. C.* § 10003(g)(2) (requiring the FOIA Coordinator to “work to foster cooperation between the public body and the requesting party”).

recommend that the Town provide a response to your modified request set forth in your November 21, 2024 email.

CONCLUSION

For the reasons set forth above, we conclude that the Town violated FOIA by failing to engage with you regarding modifying your request.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: James E. Liguori, Attorney for the Town of Bethany Beach