



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-IB10**

**February 19, 2025**

**VIA EMAIL**

Jared Silberglied  
American Civil Liberties Union of Delaware  
[jsilberglied@aclu-de.org](mailto:jsilberglied@aclu-de.org)

**RE: FOIA Petition Regarding the Sussex County Vocational Technical School District**

Dear Mr. Silberglied:

We write in response to your correspondence filed on behalf of the American Civil Liberties Union of Delaware (“ACLU”), alleging that the Sussex County Vocational Technical School District 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 of whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that the District did not violate FOIA, as it met its burden of demonstrating that its cost estimate included the hourly rate of the lowest-paid employee capable of collecting the responsive records.

**BACKGROUND**

On October 9, 2024, the ACLU submitted a FOIA request for various records related to the District’s English Learner programming and data.<sup>1</sup> On December 4, 2024, the District replied with a cost estimate of \$379.26 for six hours at the hourly rate of \$63.21 and stated upon receipt of this payment, it would forward the information. You asked whether the District would provide

---

<sup>1</sup> Petition.

any documents without charge. You also noted your surprise at the amount of the hourly rate and questioned whether this was the lowest-paid employee capable of performing the service. The District responded that the hourly rate was correct but reduced the administrative fees to \$316.05 to account for a “free hour” of administrative services. The District also stated it had “already assembled the documents if you wish to receive them.”<sup>2</sup> You responded that a public body is required to provide an itemized written cost estimate prior to fulfilling the request, and had you been given the fee estimate before the District completed the work, you might have modified this request. However, by collecting the records ahead of time, you believe you lost the opportunity to modify the request, and the District should waive all fees and provide the responsive documents to you for free.<sup>3</sup> The District replied that you have the option to pay the cost for the original request or to modify your request and the District would update the estimate. This Petition followed.

In the Petition, you argue that while you believe the time estimate is appropriate given the large scope of this request, you do not believe that the District followed FOIA’s requirements in selecting this employee’s hourly rate for the cost estimate. In addition, you claim that the District’s offer that you may modify your request to be illogical. You reiterate that the District should provide these records free of charge, because you were not given an opportunity to modify the request.

The District, through its legal counsel, replied to the Petition and enclosed the affidavit of the Director of Human Resources and Support Services for the District (“Response”), who attests to having personal knowledge of the relevant facts. The District argues its response was appropriate. The Director attests that the District only has one employee with the password and necessary training to access the information requested, who is a teacher serving as the District’s Multi Language Learners Coordinator. The Director states under oath that this employee has the specialized knowledge to collect and review the requested records, which includes “sorting, certainty of deidentification, and disaggregation.”<sup>4</sup> The District further states that the ACLU was not deprived of the choices available under statute to proceed with, cancel, or modify the request; all three options remain on the table.

## **DISCUSSION**

The public body carries the burden of proof to demonstrate compliance with the FOIA statute.<sup>5</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>6</sup> FOIA

---

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

<sup>3</sup> *Id.*

<sup>4</sup> Response, Aff. of Director of Human Resources and Support Services, dated Jan. 30, 2025.

<sup>5</sup> 29 *Del. C.* § 10005(c).

<sup>6</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

permits public bodies to charge certain fees to fulfill a request for records and provides that “[p]rior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records.”<sup>7</sup>

In determining fees, the statute provides that “[c]harges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs).”<sup>8</sup> Further, the public body is obliged to “make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonabl[y] required to process FOIA requests” and must “minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.”<sup>9</sup> Administrative fees must be billed at the “current hourly pay grade (prorated for quarter hour increments) of the lowest-paid employee capable of performing the service.”<sup>10</sup> Also, the public body is to waive one hour of the administrative fees incurred for processing the request.<sup>11</sup> “Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.”<sup>12</sup>

In this matter, the ACLU contends that the District has not identified the lowest-paid employee capable of processing this request. The Director states under oath that the Multi Language Learner Coordinator is the “lowest-paid employee capable of gathering responsive records.”<sup>13</sup> The Director of Human Resources and Support Services, who attests to being familiar with this matter, states under oath that the collection of the requested information requires specialized knowledge and training, including “sorting, certainty of deidentification, and disaggregation.”<sup>14</sup> Accordingly, we find that the District’s affidavit sufficiently supports that this employee’s hourly rate was appropriately asserted in the cost estimate. As the District has made clear, the ACLU may cancel, modify, or proceed with the request.

---

<sup>7</sup> 29 *Del. C.* § 10003(m)(2).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Del. Op. Att’y Gen.* 24-IB02, 2024 WL 629389, at \*4 (Jan. 17, 2024); *Del. Op. Att’y Gen.* 22-IB08, 2022 WL 1125018, at \*2 (Apr. 4, 2022).

<sup>12</sup> 29 *Del. C.* § 10003(m)(2).

<sup>13</sup> Response, Aff. of Director of Human Resources and Support Services, dated Jan. 30, 2025.

<sup>14</sup> *Id.*

**CONCLUSION**

For the reasons set forth above, we conclude that the District did not violate FOIA, as it met its burden of demonstrating that its cost estimate included the hourly rate of the lowest-paid employee capable of collecting the responsive records. The ACLU may cancel, modify, or proceed with the 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 H. McMackin, III, Attorney for the Sussex County Vocational Technical School District