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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB18

March 20, 2025

VIA EMAIL

Meryem Y. Dede
meryem.y.dede@gmail.com

RE: FOIA Petition Regarding the Delaware State Police, Department of Safety and Homeland Security

Dear Ms. Dede:

We write in response to your correspondence alleging that the Delaware State Police, Department of Safety and Homeland Security (“DSP”) violated Delaware’s 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 of whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we determine that the DSP did not violate FOIA by denying access to the requested records.

BACKGROUND

On October 1, 2024, November 1, 2024, December 4, 2024, and January 14, 2025, you filed requests for the same information: “how many automatic expungements (See 11 *Del. C.* 4373A) have happened under Delaware’s Clean Slate bill from August 1, 2024 (the day it was enacted), to [the first day of the month in which the FOIA request was submitted].”¹ The DSP responded to the first two requests submitted in October and November by stating that FOIA does not require a public body to compile data, answer questions, or create records that do not already exist, but the DSP still included the requested number of automatic expungements in its responses. However, after a delay during which the DSP noted that fees might be assessed through a cost

¹ Petition (emphasis in original).

estimate, the DSP denied both the December and January requests on January 22, 2025, stating that the “DSP does not possess an existing record containing this information, nor does DSP maintain such statistics in the normal course of its business.”² The DSP reasserted that FOIA does not require a public body to compile data, answer questions, or create records that do not already exist. The DSP noted that it previously compiled this data as a courtesy, and “given the considerable staff time otherwise diverting scarce resources to repeatedly compile the information,” the DSP could not provide the requested data at that time.³ The DSP also noted that it anticipates preparing information for the Clean Slate initiative for review by the public and the General Assembly and would be willing to share a copy, once it is finalized. This Petition followed.

In the Petition, you state that the DSP did not offer an option to pay a fee to receive the information and gave no explanation for why the DSP staff was able to quickly compile the numbers in response to the October and November requests, but the December and January requests were too difficult. Further, you argue that while FOIA does not require creating a new record, a simple exportation of data to a spreadsheet does not constitute a new record and you believe that “[i]t is likely that putting together the number of people who have received an automatic expungement is a simple computer function.”⁴ You assert that an internal email the DSP staff mistakenly sent to you to implies that “responding to these FOIA requests might be able to be fulfilled by a single person at DSP.”⁵

On February 25, 2025, the DSP, through its legal counsel, replied to the Petition (“Response”). The Response asserts that these requested statistics do not exist, nor is there existing programming to produce this information. The DSP states that to answer the first two requests, an individual manually pulled and reviewed each expungement file to count the number of Clean Slate expungements. The Response included the affidavit of the Director of the State Bureau of Identification (“SBI”), who attests that the “SBI does not have computer [programming] that differentiates between other expungement types and Clean Slate expungements” and programming “to collect this data is in development but does not currently exist.”⁶

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Response, Ex. A.

DISCUSSION

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁷ 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 While a public body is not required to create a new document in response to a FOIA request, producing “easily disclosable information stored in a computer system does not require the creation of a new record.”¹⁰ In this case, you seek specific statistics, the number of automatic expungements under the Clean Slate bill, and the DSP met its burden of demonstrating under oath that it is not able to produce this information from its computer system, as it does not have the existing capability to isolate the number of expungements under the Clean Slate bill. In reliance on these sworn statements, we find no violation of FOIA occurred when DSP denied the December and January requests.

CONCLUSION

For the foregoing reasons, we conclude that the DSP did not violate FOIA by denying access to the requested records.

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Dennis Kelleher, Deputy Attorney General
Dorey Cole, Deputy Attorney General

⁷ 29 Del. C. § 10003(a).

⁸ 29 Del. C. § 10005(c).

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

¹⁰ *Vanella v. Duran*, 2024 WL 5201305, at *9 (Del. Super. Dec. 23, 2024).