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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB29

May 21, 2025

VIA EMAIL

Tom Somers, Jr.
tom.somers1@icloud.com

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

Dear Mr. Somers:

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 March 20, 2025, you submitted a FOIA request for the following records related to an encounter you had with a police officer on March 19, 2025:

1. Body-worn camera footage from [a police officer] during the incident.
2. Dash camera footage from [this officer's] patrol vehicle covering the time of the stop.
3. Audio recordings and transcripts of any radio or dispatch communications related to this stop.

4. All officer reports or documentation regarding this incident, including notes, citations, and reasons for the stop.¹

The DSP denied this request, citing the exemptions for criminal law enforcement investigatory records under 29 *Del. C.* § 10002(o)(3) and for records related to pending or potential litigation under 29 *Del. C.* § 10002(o)(9).² This Petition followed. In the Petition, you question whether these exemptions were properly asserted. You point out that you are the subject of these records, and you have not been informed of any pending investigation or criminal case. You argue that the “public interest in transparency and accountability outweighs any investigatory exemption in this matter.”³

On April 30, 2025, the DSP, through its legal counsel, replied to the Petition (“Response”). The Response included the affidavit of the DSP’s Community Relations Officer, who also serves as the FOIA coordinator for the DSP. The Community Relations Officer states under oath that the request seeks records related to your pedestrian stop that are considered part of the law enforcement investigatory file and are therefore subject to Section 10002(o)(3).

DISCUSSION

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁴ The public body has the burden of proof to justify its denial of access to records.⁵ In certain circumstances, a sworn affidavit may be required to meet that burden.⁶

In its response to this request, the DSP invoked Section 10002(o)(3), which exempts “[i]nvestigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue.” The records you seek are related to your specific encounter in which a police officer initiated a pedestrian stop and investigation.⁷ The Community Relations Officer states under oath that the request seeks records that are part of the law

¹ Petition.

² As we find that the investigatory files exemption is determinative, we do not further address the pending or potential litigation exemption.

³ Petition.

⁴ 29 *Del. C.* § 10003(a).

⁵ 29 *Del. C.* § 10005(c).

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

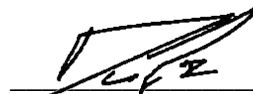
⁷ Petition; Response, Aff. of Community Relations Officer dated Apr. 30, 2025.

enforcement investigatory file and are subject to Section 10002(o)(3). We determine that the DSP's denial of access to these records under the investigatory files exemption is proper, as these records involve a law enforcement encounter that precipitated a police investigation.⁸ Even if the investigation is no longer pending and you are the subject of these records, this exemption applies; neither factor impacts this analysis under FOIA.⁹

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: Joseph C. Handlon, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁸ *Del. Op. Att'y Gen.* 25-IB14, 2025 WL 818783, at *2 (Feb. 28, 2025) (“The DSP’s denial of these photographs and video footage under the investigatory files exemption is proper, as these records involve a law enforcement encounter precipitating a police investigation.”); *Del. Op. Att’y Gen.* 24-IB11, 2024 WL 1132324, at *2 (Feb. 23, 2024) (“This request seeks information regarding the date and type of calls for service to the DSP from a particular residence, which on its face, would initiate police investigation. Thus, the requested records are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).”).

⁹ The investigatory files exemption continues to apply after an investigation is closed. *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *2-3 (Del. Ch. Nov. 20, 1980) (determining that the investigatory files exemption attaches as soon as a public body is made aware of a potential issue and the exemption survives after the investigation is completed). Additionally, FOIA does not prescribe whether a person is entitled to records that pertain to that person; FOIA merely mandates what records must be made available to the public. *See Del. Op. Att’y Gen.* 18-IB13, 2018 WL 1405829, at *1 (Mar. 6, 2018) (finding that the propriety of a request seeking records about the requesting party is outside the scope of the FOIA statute, as “any such entitlement would have no basis in Delaware’s FOIA and is therefore beyond the scope of our role in this context.”).