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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB33

June 26, 2025

VIA EMAIL

Jared Silberglied
American Civil Liberties Union of Delaware
jsilberglied@aclu-de.org

RE: FOIA Petition Regarding the Town of Camden

Dear Mr. Silberglied:

We write in response to your correspondence, alleging that the Town of Camden 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 Town violated FOIA by failing to meet its burden to demonstrate that the redacted communications were appropriately withheld under FOIA.

BACKGROUND

On May 6, 2025, you submitted a FOIA request to the Town of Camden seeking "information regarding the Town of Camden's 287(g) agreement with the United States Department of Homeland Security/Immigration and Customs Enforcement."¹ More specifically, this request sought the following:

1. Any and all written communications (i.e. letters, emails, calendar invitations, text messages, etc.) between the Town of Camden Police

¹ Petition, Ex. 1.

Department, City Council, Mayor's Office, and any other relevant parties (collectively "Camden") regarding the federal 287(g) immigration program. This includes any communications relating to both the potential implementation of and revocation of any 287(g) programs.

2. Any and all written communications between Camden and the United States Department of Homeland Security and/or Immigration and Customs Enforcement regarding the federal 287(g) immigration program. This includes any communications relating to both the potential implementation of and revocation of any 287(g) programs.
3. Any and all written communications between Camden and the Delaware Governor's and/or Attorney General's Office regarding the federal 287(g) immigration program. This includes any communications relating to both the potential implementation of and revocation of any 287(g) programs.
4. Any and all agreements between Camden and the federal government regarding the 287(g) immigration program including agreements that were previously in affect and have subsequently been rescinded.²

In the Petition, you state that your request largely concerned the emails between Immigration and Customs Enforcement ("ICE") and the Town's police department regarding this 287(g) federal immigration program. You allege that the Town's police chief informed you that the Town withdrew from the agreement on May 6, 2025 and asked if you were still interested in the emails; you confirmed you were. The Town's police chief later informed you that he consulted with ICE, who requested that the communications be withheld and that you instead file a request with ICE's FOIA department. The Town subsequently responded to your request, disclosing emails with ICE and redacting "anything from the ICE side of the emails."³ Thus, the production included only emails from the Town to ICE and redacted ICE's emails to the Town.

This Petition followed, arguing that these redactions are improper. You assert that all the emails must be disclosed, not half of the conversation. You state that these emails are retained or received by the Town and therefore are part of their "public records," and there is no exemption that permits withholding ICE's emails; ICE's request to withhold records does not overcome FOIA's requirements. Even if the Town argues that Section 10002(o)(6), which excludes records specifically exempted from disclosure by statute or common law, is applicable, you contend that a general statement of confidentiality from a federal agency does not constitute a statute, nor does the federal FOIA law constitute a "statute" under Section 10002(o)(6).

² *Id.*

³ Petition, Ex. 4.

The Town, through its legal counsel, replied to this Petition (“Response”) and enclosed the affidavit of the police chief, attesting that the factual statements in the Response are true and correct to the best of his knowledge. The Town alleges that the police department lacked the authority to release these emails under Delaware’s FOIA because of the verbal requests from ICE to withhold the records and ICE’s email signature. The signature stated that the communication is “UNCLASSIFIED/FOR OFFICIAL USE ONLY,” may be exempt under the federal FOIA statute, is to be handled in accordance with the “DHS policy relating to FOUO information,” and “is not to be released to the public or other personnel who do not have a valid ‘need to know’ without prior approval of an authorized DHS official.”⁴ In addition, the Town asserts that these communications are exempt under Section 10002(o)(17)(a)(4) and (5) because these emails pertain to information about the 287(g) immigration program and involve “responding to emergency situations and criminal acts in immigration apprehension activities of law enforcement” and the release would have a “substantial likelihood of threatening public safety.”⁵

DISCUSSION

In any action brought under Section 10005, the public body has the burden of proof to justify its denial of access to its records.⁶ In certain circumstances, a sworn affidavit may be required to meet that burden.⁷ In its Response, the Town contends that it lacked the authority to release these communications due to the limitations in the email signature and ICE’s verbal objection to this disclosure. Without more, neither basis constitutes a sufficient rationale to withhold records; the Town must identify a basis under the FOIA statute to withhold its records.

The Town also asserts that these records are exempt from disclosure under Section 10002(o)(17)(a)(4) and (5). Section 10002(o)(a)(17)(4) applies to “records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained or regulated by the State or any of its political subdivisions.” However, there is no basis in this record to support that the withheld records pertain to “medical facilities, storage facilities, or laboratories.” In addition, the Town argues that Section 10002(o)(17)(a)(5) applies here, which has subsections (A) and (B). In *Vanella v. Duran*, the Superior Court of Delaware examined the standard set by Section 10002(o)(17)(5)(A):

The Safety Exception, *as DSP attempts to apply in this case*, has more components and sets a higher bar. Namely, relevant to Delaware Call's

⁴ Response.

⁵ *Id.*

⁶ 29 Del. C. § 10005(c).

⁷ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

requests, the Safety Exception requires all of the of the following: (1) disclosure of the records could endanger individual life or physical safety; (2) the portions of the records at issue were created or maintained to prevent, mitigate, or respond to criminal acts; (3) disclosure of the records would have a substantial likelihood of threatening public safety; and (4) the records fit within “specific and unique” vulnerability assessments or response/deployment plans or are underlying data collected to facilitate those assessments or plans.⁸

Similarly, to apply Section 10002(o)(17)(5)(B) in this instance, the Town must meet the first three prongs above and for the fourth prong, show that these records are “not subject to public disclosure under federal law that are shared by federal or international agencies and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for criminal acts against United States citizens or targets.”⁹ In its Response, the Town asserts, under oath, that these emails contain information about the 287(g) immigration program and involve “responding to emergency situations and criminal acts in immigration apprehension activities of law enforcement” and the release would have a “substantial likelihood of threatening public safety.”¹⁰ As these assertions do not fully address, nor provide the relevant factual support that these standards under Section 10002(o)(17)(5)(A) and (B) have been met, we determine that the Town failed to meet its burden of proof to demonstrate that this exemption is applicable. Accordingly, we find a violation for failing to demonstrate the redactions were appropriate and recommend that the Town, in compliance with the timeframes set forth in Section 10003, review its position in light of this determination and if appropriate under FOIA, supplement its response to your request, with additional information, responses, or records.

CONCLUSION

For the reasons set forth above, we conclude that the Town violated FOIA by failing to meet its burden to demonstrate that the redacted communications were appropriately withheld under FOIA.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

⁸ 2024 WL 5201305, at *7 (Del. Super. Dec. 23, 2024) (emphasis in original).

⁹ 29 *Del. C.* § 10002(o)(17)(5)(b).

¹⁰ Response.

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gregory A. Morris, Attorney for the Town of Camden