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## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

### Attorney General Opinion No. 25-IB40

August 5, 2025

#### **VIA EMAIL**

Georgette Ondobo  
[herve.raoul@gmail.com](mailto:herve.raoul@gmail.com)

#### **RE: FOIA Petition Regarding the Delaware Department of Transportation**

Dear Ms. Ondobo:

We write regarding your correspondence alleging that the Delaware Department of Transportation (“DelDOT”) violated the Delaware 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 regarding whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we find that DelDOT did not violate FOIA by denying access to the requested records.

#### **BACKGROUND**

On April 20, 2025, you submitted a request for the public records associated with the toll violations of a vehicle with a certain license plate. You asked for copies of “the alleged toll violation with date, amount and time of the violation from February 01, 2020 through April 20, 2025” and “records of toll payments from February 01, 2020 through April 20, 2025, with amount, time and date.”<sup>1</sup> DelDOT denied access to these records on May 6, 2025 due to the statutory limitation on releasing personal information in Division of Motor Vehicle records in Section 305 of Title 21 of the Delaware Code. In addition, DelDOT cited 29 *Del. C.* § 10002(o)(3), which exempts investigatory files for civil or criminal law enforcement purposes. Despite this denial, DelDOT noted it was forwarding your request directly to the DMV’s Toll Administration for

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<sup>1</sup> Petition.

assistance. This Petition followed.

In the Petition, you assert that you are entitled to the records, as you are a citizen of Delaware requesting your own public toll transaction records for personal use, and not for a commercial purpose. You state that these records should be available to you, as Section 10003 requires public bodies to allow inspection and copying of public records during regular business hours. You refer to the portion of Section 305 of Title 21, which allows personal information to be disclosed upon proof of identity of the person and the sworn representation that the use of the information will follow one of the described purposes; your Petition recites the purposes set forth in subsections (1), (2), (3), (4), (11), and (13).

On July 15, 2025, DelDOT, through its legal counsel, replied to the Petition (“Response”) and enclosed the affidavit of DelDOT’s Application Support Project Leader. The Project Leader states under oath that he verified you have both Toll by Plate matters and Violations Processing System matters in the collections process.<sup>2</sup> The Project Leader attests that DelDOT has not received or does not have in its possession, copies of the violation letters, that are issued by the company that is contracted to administer DelDOT’s toll program to send violation letters, nor does DelDOT possess copies of the records from another company contracted to handle the collections process for unpaid amounts. In addition, DelDOT states it does not have access to the requested toll payment records, because you do not have a Delaware E-ZPass account; DelDOT does not “have direct access to any other State’s E-ZPass system” to determine if you have another state’s E-ZPass account nor documents in its possession which track usage of toll roads by out of state E-ZPass holders; and DelDOT does not “track toll payments made by any vehicle which pays cash at any toll facility, as license plates are not tracked or captured when a vehicle pays cash.”<sup>3</sup>

DelDOT further argues that even if it had these records, they are exempt under FOIA. Section 10002(o)(6) excludes any records that are exempt from disclosure pursuant to statute or common law, and DelDOT states that it is prohibited from producing these records under 21 *Del. C.* § 305. Subject to limited exceptions, this provision prohibits the release of personal information obtained in connection with a “motor vehicle record,” which include “any record that pertains to a motor vehicle operator’s or driver’s permit or license, motor vehicle title, motor vehicle registration or identification document issued by a Division of Motor Vehicles or other state or local agency authorized to issue any such forms or credentials.”<sup>4</sup> DelDOT asserts it has a separate process by which a person may still obtain records under the exceptions, but the process includes filling out a specific DMV form.

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<sup>2</sup> “Toll by Plate” refers to the billing system that is used on certain roadways that do not have cash payment facilities available, only E-ZPass facilities; vehicles without E-ZPass are charged by plate. “Violations Processing System” is the “system used to issue violations to registered owners of vehicles that proceed through a toll facility without making payment, either in cash when facilities exist for cash payment, or via a valid and properly funded E-ZPass transponder being recognized.” Response, Ex. B.

<sup>3</sup> Response, Ex. B.

<sup>4</sup> 21 *Del. C.* § 305.

DelDOT argues that the records you seek are investigatory records compiled for civil law enforcement purposes, which are exempt under Section 10002(o)(3), because the vehicle registered to you used roads subject to a toll without making payment, and multiple civil violations pursuant to 21 *Del. C.* § 4129 occurred and “statutorily mandated administrative fees and civil penalties” attached.<sup>5</sup> DelDOT also contends that the records are exempt under the pending or potential litigation exemption in Section 10002(o)(9), because you seek information regarding unpaid tolls, which has been referred to the collections process and may result in litigation.

## **DISCUSSION**

Delaware’s FOIA law “was enacted to ensure governmental accountability by providing Delaware’s citizens access to open meetings and meeting records of governmental or public bodies, as well as access to the public records of those entities.”<sup>6</sup> FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.<sup>7</sup> The public body has the burden of proof to justify its denial of access to records.<sup>8</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>9</sup>

In its Response, DelDOT initially contends that it does not possess or have direct access to the records and is therefore not obligated to produce them. DelDOT acknowledges it has contracted with two companies to administer its toll program and collect unpaid amounts. Under FOIA, a public body must provide access to records, which are not within its possession, but are still within its control. For example, this Office has found that “FOIA may require a public body to produce records that are in the possession of a third-party in a contractual relationship with the public body.”<sup>10</sup> FOIA itself contemplates that a public body may have noncustodial records that

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<sup>5</sup> Response, p. 7.

<sup>6</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

<sup>7</sup> 29 *Del. C.* § 10003(a).

<sup>8</sup> 29 *Del. C.* § 10005(c).

<sup>9</sup> *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

<sup>10</sup> *Del. Op. Att’y Gen.* 07-IB05, 2007 WL 4732788, at \*3 (Mar. 20, 2007) (“We believe that the courts in Delaware would agree that when a public body has constructive possession or administrative control of records in the possession of an accountant or attorney or other private agent, those records are public records for purposes of FOIA and the public body must arrange to make those records available for inspection and copying upon request.”); *see also Del. Op. Att’y Gen.* 06-IB17, 2006 WL 2630107, at \*5-6 (Aug. 21, 2006) (finding the Public Integrity Commission to be the custodian of a database created and held by a vendor on an outside server and noting the Commission owned the data and retained access to the database).

are controlled by the public body, but not within its possession.<sup>11</sup> It is DelDOT's burden to establish that it does not retain control over these records in possession of its third party contractors administering its toll program.<sup>12</sup> We find that DelDOT, in this instance, has failed to meet this burden, and we must consider whether the records meet one of the asserted exemptions.

Section 10002(o)(6) excludes any records that are exempt from disclosure pursuant to statute or common law, and DelDOT argues that it is prohibited from providing these records you seek pursuant to 21 *Del. C.* § 305, which states any DelDOT officer, employee, or contractor "shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the Division in connection with a motor vehicle record." Motor vehicle records include "any record that pertains to a motor vehicle operator's or driver's permit or license, motor vehicle title, motor vehicle registration or identification document issued by a Division of Motor Vehicles or other state or local agency authorized to issue any such forms or credentials."<sup>13</sup> We find that DelDOT reasonably determined that the requested records – your toll violation records as the registered owner of a vehicle licensed in this State – are motor vehicle records. As such, we find that DelDOT did not violate FOIA in denying access to the records you seek.

FOIA does not prescribe whether a person is entitled to records that pertain to that person; FOIA merely mandates what records are "public records" and must be made available to any Delaware citizen through a FOIA request.<sup>14</sup> In this case, 21 *Del. C.* § 305 includes exceptions to this general prohibition, allowing disclosure of personal information in motor vehicle records by a separate process, including a requirement for proof of the identity of the person. DelDOT, in its Response, indicates a form is available for requesting personal information from motor vehicle records but does not advise whether the types of records you seek are eligible for disclosure. We encourage DelDOT to review its records to determine whether any of the requested records within its control can be made available to you pursuant to its statutory authority and if so, to advise how you can obtain those records outside of the FOIA process.

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<sup>11</sup> 29 *Del. C.* § 10003(j) (outlining process for noncustodial records).

<sup>12</sup> *Del. Op. Att'y Gen.* 07-IB05, 2007 WL 4732788, at \*4 ("Under FOIA, the Town has the burden of proving that it does not have constructive possession or administrative control over records in the possession of third party agents like attorneys and accountants.").

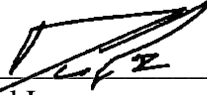
<sup>13</sup> 21 *Del. C.* § 305(p)(1).

<sup>14</sup> *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.").

## **CONCLUSION**

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Logan', is written over a horizontal line.

Daniel Logan  
Chief Deputy Attorney General

cc: George T. Lees, III, Deputy Attorney General  
Dorey L. Cole, Deputy Attorney General