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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB43

August 27, 2025

VIA EMAIL

Ben Mace
The News Journal/Delaware Online
rmace@gannett.com

RE: FOIA Petition Regarding the City of Dover

Dear Mr. Mace:

We write in response to your correspondence alleging that the City of Dover 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 City violated FOIA by failing to demonstrate it appropriately responded to the first request and by failing to demonstrate its cost estimate for the second request was compliant with FOIA.

BACKGROUND

On May 7, 2025, you submitted a FOIA request, noting that The News Journal was writing its annual story about government salaries and seeking "salary data for 2024 including the name of each employee, their department, their regular pay, overtime, bonus/other pay and total pay in a spreadsheet form (xls, xlsx or csv)."¹ You stated that providing this information in the same format the City sent to another reporter last year would suffice. Following this, the City gave you a cost estimate of \$8.68 to retrieve the "2024 employee salary database," granting the first thirty

¹ Petition.

minutes of staff time for free.² After you paid this amount, the City responded by producing a report consisting of the employee names, the active status description, job class code description, union affiliation, hourly rate, annual pay, and pay frequency. The City also advised that the Finance Department implemented a new payroll system, and the City is “not able to provide the requested bonuses and overtime, as it is not available in one report.”³ You submitted a second request on May 29, 2025 for employee names, job titles, overtime pay, and bonuses for 2024. That same day, the City replied with a cost estimate for \$511.57, with thirty minutes of staff time deducted from the total charges. The City stated that the “information is spread across multiple databases and is not available in a single report.”⁴ Compiling this report, the City asserts, would require “time and manual calculations.”⁵ This Petition followed.

In the Petition, you argue that the City’s actions were improper under FOIA, as the City required you to pay \$8.68 for your first request but after you made payment, the City advised that you would not receive the overtime and bonus information you requested. Second, you assert that the \$511.57 charge to retrieve the employee bonus and overtime is excessive. This Office requested the City’s response to this Petition but did not receive a response.

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.”⁶ 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 and to otherwise demonstrate compliance with FOIA.⁸ In certain circumstances, a sworn affidavit may be required to meet that burden.⁹

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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

⁷ 29 Del. C. § 10003(a).

⁸ 29 Del. C. § 10005(c).

⁹ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

FOIA permits a public body to charge citizens certain fees for processing FOIA requests. “Prior 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.”¹⁰ 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).”¹¹ 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.”¹² 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.”¹³ The public body is to waive one hour of the administrative fees incurred for processing the request.¹⁴ “Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.”¹⁵

With respect to the Petition’s claims, the City has not provided a response or any evidence of its compliance with FOIA. As the public body has the burden of proof, we are compelled to find that the City violated FOIA by failing to appropriately communicate regarding the costs of the first request and to support that its cost estimate for the second request was compliant with FOIA.¹⁶ We recommend that, within the timeframes provided in Section 10003, the City supplement its response to these requests in light of this Opinion, with additional responses or information, if appropriate under FOIA.

¹⁰ 29 Del. C. § 10003(m).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Del. Op. Att’y Gen. 25-IB11, 2025 WL 627019, at *2 (Feb. 19, 2025); 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).

¹⁵ 29 Del. C. § 10003(m)(2).

¹⁶ 29 Del. C. § 10005(c).

CONCLUSION

For the reasons set forth above, we conclude that the City violated FOIA by failing to demonstrate it appropriately responded to the first request and by failing to demonstrate its cost estimate for the second request was compliant with FOIA.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: David Hugg, City Manager