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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB38

July 31, 2025

VIA EMAIL

Stephanie Stranick
ss1063@nyu.edu

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

Dear Ms. Stranick:

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 June 17, 2025, you submitted a FOIA request to the DSP for “police incident reports, service call summaries, and related records” from November 1, 2022 to the present pertaining to a certain property address.¹ You also sought two police complaints identified by number and other related public safety complaints within a certain residential home community.

The DSP denied this request, citing the exemptions for investigatory records for criminal law enforcement purposes under 29 *Del. C.* § 10002(o)(3), criminal records under 29 *Del. C.* §

¹ Petition.

10002(o)(4) and records exempt from disclosure by statute or common law under 29 *Del. C.* § 10002(o)(6), citing the right of privacy and Title 11, Chapters 85 and 86 of the Delaware Code. You replied to the DSP’s response, challenging the denial as an improper use of the right of privacy and noting the requested records do not involve investigatory notes, sensitive personal information of third parties, or unredacted witness statements; rather, the records pertain to you and your community. You indicated you wished to appeal the decision. In response, the DSP gave you information to file a FOIA petition and stated that a Delaware issued subpoena would be required to obtain these records. You replied, reiterating your request and asserting you should not be required to obtain a subpoena in these circumstances. This Petition followed.

In the Petition, you assert that you should have access to these records, as they relate to police calls you personally made, and they pertain to safety concerns in your home and community. You also allege that this denial under FOIA reflects a pattern of nondisclosure, as the DSP refused another request when you tried to obtain police reports about similar incidents in 2023.

On July 11, 2025, the DSP, through its legal counsel, replied to the Petition (“Response”). The DSP argues that the investigatory files exemption and the common law right of privacy apply to these records on their face, as the records sought pertain to law enforcement incidents initiated by phone calls placed by you and others in the community. The DSP further contends that this request “specifies reports related to criminal incidents connected to the development, triggering the criminal and confidential record exceptions pursuant to § 10002(o)(4) and § 10002(o)(6) (11 *Del. C.* Chapters 85 and 86).”²

DISCUSSION

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.³ The public body has the burden of proof to justify its denial of access to records.⁴ In certain circumstances, a sworn affidavit may be required to meet that burden.⁵

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 and others’ phone calls to law enforcement regarding your home and community. We determine that the DSP’s denial of access to these records under the investigatory files exemption is proper, as these

² Response.

³ 29 *Del. C.* § 10003(a).

⁴ 29 *Del. C.* § 10005(c).

⁵ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

records involve law enforcement encounters that precipitated a police investigation.⁶ Even if you made the initiating police calls or the complaints relate to your property or community, this exemption in Section 10002(o)(3) applies; neither factor impacts this analysis under FOIA.⁷

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

⁶ *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).”).

⁷ 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.”).