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

### Attorney General Opinion No. 25-IB45

September 9, 2025

#### **VIA EMAIL**

Irina Genseruk  
[irensinspection@gmail.com](mailto:irensinspection@gmail.com)

#### **RE: FOIA Petition Regarding New Castle County**

Dear Ms. Genseruk:

We write in response to your correspondence alleging that New Castle County 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 County did not violate FOIA as alleged in the Petition.

#### **BACKGROUND**

In June 2025, you submitted a FOIA request, seeking records concerning a certain parcel in Wilmington, Delaware. You specifically sought (1) the full list of permits for this property for the years 2023 to 2025, including the permit numbers, issuance dates, type and scope of work, name of applicant or contractor, and inspection and approval history; and (2) documentation and communications related to a specified case number, including the basis on which the case was closed, any inspection reports or findings, and the permits relied on to justify closure. On July 3, 2025, the County denied access to the requested records based on your apparent lack of State citizenship. After you clarified that you are a resident of Delaware, the County reopened your request for processing. On July 11, 2025, the County provided a substantive response, attaching responsive code enforcement documents and noting that some records were considered exempt, as they are part of the County's investigatory file. In addition, the County stated that all permits issued since July 1998 can be viewed online and provided instructions for accessing this

information. Following the provision of the substantive response, you submitted several objections and inquiries to the County. The matter was not resolved, and this Petition followed.

In the Petition, you argue that the County violated FOIA, and you further allege the County's Code Enforcement and Department of Land Use staff committed procedural misconduct in handling your complaints regarding this property. Specifically, you allege with respect to FOIA that the County's "response did not cite specific statutory exemptions for the denial of any documents; [i]t did not provide a log or index of withheld records, even though multiple documents were clearly omitted; [t]he message was formulaic and non-individualized, ignoring the details of my request and failing to address key concerns; [i]t referenced only publicly available websites, while deliberately avoiding questions related to decision-making and enforcement actions; [and] [n]o clarification was provided regarding the grandfathered use status of the parcel, which was central to the request."<sup>1</sup> In addition, you argue that the County's initial denial of your request on July 3, 2025 based on your citizenship constituted a violation of FOIA.

The County, through its legal counsel, replied to this Petition ("Response") and enclosed the affidavit of the Assistant Land Use Administrator. In its Response, the County explains its basis for answering the request and your subsequent correspondence. The County states that a request for an explanation is not a document request and is not appropriately handled through FOIA. The County points out that FOIA does not require an index of the withheld records to be produced with the response. The County argues that the initial denial of the request based on citizenship is authorized by FOIA and notes that your request was reopened for processing after you advised you were a citizen of Delaware.

## **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>2</sup> FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.<sup>3</sup> The public body has the burden of proof to justify its denial of access to records and to otherwise demonstrate compliance with FOIA.<sup>4</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>5</sup>

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<sup>1</sup> Petition.

<sup>2</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

<sup>3</sup> 29 Del. C. § 10003(a).

<sup>4</sup> 29 Del. C. § 10005(c).

<sup>5</sup> *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

As a preliminary matter, the Petition’s allegations unrelated to FOIA are not appropriate for this Office’s consideration. This Office is limited to reviewing alleged FOIA violations and issuing determinations.<sup>6</sup> Your requests in the Petition – asking this Office to review procedural misconduct and other land use issues – exceeds the scope of what this Office may consider under a petition initiated pursuant to 29 *Del. C.* § 10005. In addition, although the County initially denied your request due to your apparent lack of State citizenship, the County withdrew its denial and processed your request. This claim became moot after the County’s withdrawal of this rationale.<sup>7</sup>

The Petition also alleges that the County’s response violated FOIA by not citing the specific statutory exemptions and being formulaic and non-individualized. Under 29 *Del. C.* § 10003(h)(2), if the public body denies a request in whole or in part, the public body must “indicate the reasons for the denial.” However, FOIA does not mandate a specific format for presenting these reasons, nor are explicit statutory citations required. In this case, the County responded by producing some responsive records and noting that other records were withheld as exempt because they were part of the investigatory file. The response also noted that all permits issued since July 1998 are available online and provided you instructions for accessing them. We find that the County’s response did not violate FOIA as alleged.

The Petition further alleges that the response was deficient under FOIA for failing to include a log or index of withheld records and for not answering the questions you posed, including asking for clarification about the grandfathered status of the property. While a public body must indicate the reasons for the denial, a public body is not “required to provide an index, or any other compilation, as to each record or part of a record denied.”<sup>8</sup> It also is well-settled that a public body is not obliged to answer questions under FOIA.<sup>9</sup> FOIA does not require the creation of new records, such as explanations related to the produced records or the underlying subject matter.<sup>10</sup> Thus, we find that the County did not violate FOIA on these bases.

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<sup>6</sup> 29 *Del. C.* § 10005(e).

<sup>7</sup> See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at \*13 (Del. Ch. May 19, 1994); *Del. Op. Att’y Gen.* 18-IB30, 2018 WL 3118433, at \*2 (Jun. 7, 2018); *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at \*2 (Del. Ch. July 27, 1998)). We note, as a courtesy, that denials based on citizenship are authorized under Delaware’s FOIA statute. See *McBurney v. Young*, 569 U.S. 221 (2013); *Del. Op. Att’y Gen.* 16-IB20, 2016 WL 5888776 (Sept. 30, 2016).

<sup>8</sup> 29 *Del. C.* § 10003(h)(2).

<sup>9</sup> See, e.g., *Del. Op. Att’y Gen.* 22-IB36, 2022 WL 8067856, n. 7 (Sept. 30, 2022); *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at \*3 (Mar. 10, 2017) (“As an initial matter, we note that FOIA does not require a public body to answer questions”); *Del. Op. Att’y Gen.* 00-IB08, 2000 WL 1092967, at \*2 (May 24, 2000).

<sup>10</sup> *Vanella v. Duran*, 2024 WL 5201305, at \*6 (Del. Super. Dec. 23, 2024) (“[A]s a general matter, a public body has no obligation to create a new record in response to a request. Rather,

## CONCLUSION

For the reasons set forth above, we conclude that the County did not violate FOIA as alleged in the Petition.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis  
State Solicitor

cc: Brian J. Merritt, Sr. Assistant County Attorney

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FOIA requires only the production of existing records possessed or controlled by a public body. That is because one of FOIA's core aims is to provide the public access to the records that a public body *actively relies upon* in making decisions that affect the community. Records created purely for the purpose of responding to a FOIA request fall outside that aim.") (emphasis in original).