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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB46

September 29, 2025

VIA EMAIL

Julie Morris
juliekmorris@live.com

RE: FOIA Petition Regarding the City of Milford

Dear Ms. Morris:

We write in response to your correspondence alleging that the City of Milford 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 its cost estimate was compliant with FOIA's fee provisions. However, we find no violation with respect to the remaining claims.

BACKGROUND

On May 28, 2025, you submitted a FOIA request to the City of Milford, designated as request 2025-38, for "[a]ny financial disclosures or money received within the last 3 years by any employees, solicitor, council members, [and the] mayor."¹ On June 18, 2025, the City sent you a spreadsheet listing payments, and two days later, the City emailed a list of the annual payment totals for its legal counsel for 2023, 2024, and 2025.

On June 26, 2025, in request 2025-60, you sought seven items related to the City's financial records from January 1, 2023 through the date of the request, including credit card statements,

¹ Petition, p. 32.

expense reports, purchase orders/invoices, employee reimbursements, consulting and service contracts, financial audits, and discretionary spending or emergency fund allocations. On July 16, 2025, the City sent a cost estimate for \$9,592.00, estimating 261 hours of work at \$36.75 per hour. The City also provided the Finance Department's comments on each item, indicating it does not have the requested contracts but believes the City Clerk has those documents and that the requested audits are available online. The City also stated that due to the magnitude of the request, a deposit would be required prior to commencing fulfillment. That same day, you asked to be sent the free items, intending to discuss the invoiced amount with your lawyer and get back to the City. On August 3, 2025, you stated you were looking for records in electronic form and would accept raw documents to reduce costs. You also asked for on-site inspection, requested a fee waiver due to the public interest in government spending oversight, and noted that the fees are supposed to be calculated at the lowest paid employee rate and you believe Milford's interns could do these tasks at their rate of \$19.00 per hour. You also questioned a few other items, primarily regarding whether the records were kept in a manner that could be "easily shared."² On August 20, 2025, the City sent the link for audit reports available on their website. The City asked if you were still interested in receiving the remainder of the request and if so, to provide payment; unless payment was received, the request would be closed.

This Petition alleges that the City violated FOIA in responding to multiple FOIA requests.³ The Petition includes emails in which you request confirmation from the City that your requests were received and argues that the City improperly shifted responsibility to you by recommending you change email providers, because your requests were often not received due to issues with City's system and your email provider. You allege that request 2025-38 was declared closed without a complete response, as the City sent partial vendor totals without providing the full, underlying financial disclosure records requested. You also allege that the cost estimate of \$9,592.00 for request 2025-60 was excessive and unreasonable.

The City, through its legal counsel, replied to the Petition, including an affidavit from the FOIA coordinator attesting that the statements in the Response are true and correct to the best of the FOIA coordinator's knowledge ("Response"). The City disputes the Petition's allegations, noting that the City has been responsive to your multiple requests, which it summarized in a spreadsheet. The City states that, in response to request 2025-38, the City sent you a print-out responsive to your request, and an additional response was provided two days later. With respect to request 2025-60, the City notes that it timely responded to this request with a cost estimate and

² Petition, p. 54.

³ The Petition makes several general claims in addition to above, including allegations against the City regarding incomplete fulfillment and unresolved invoices; the provision of links to documents online rather than fulfilling the specific requests submitted; and unilaterally closing requests when payments were not made. These claims are not accepted for consideration, as they do not provide the factual basis of the allegation, nor do they cite the relevant request(s) and/or response(s) subject to the claim. These claims may be submitted with additional specificity as a new petition, to the extent permitted by Section 10005 and the Delaware Department of Justice Rules of Procedure for FOIA Petitions and Determinations.

gave you the opportunity to obtain these records, but no payment was made. The City asserts an affidavit, executed on August 14, 2025, documents the communications with you regarding the administrative fees. Additionally, the Response, which is submitted under oath, states that all your requests have been received, and any issues with receiving these request receipts were due to issues on your end.

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.”⁴ The public body has the burden of proof to justify its denial of access to records.⁵ In certain circumstances, a sworn affidavit may be required to meet that burden.⁶

The Petition first claims that the City violated FOIA by failing to address the delivery issues associated with your receipt of FOIA request confirmations. While we encourage public bodies to cooperate with requests for confirmations of receipt, the FOIA statute does not require such confirmations be sent, and we find no violation in this regard.

The Petition also alleges that for request 2025-38, the City failed to give you the “full underlying financial disclosure records” you sought. This request asked for “any financial disclosures or money received within the last 3 years by any employees, solicitor, council members, [and] mayor.” The City disclosed payment information in the form of a spreadsheet and yearly totals. The parties’ positions on this Petition reveal conflicting views about the records sought. To clarify the records you seek, you may wish to file an updated FOIA request with the City with more specificity. At this time, no violation is found.

Finally, the Petition asserts that the cost estimate related to 2025-60 is excessive and unreasonable. 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.”⁷ 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).”⁸ However,

⁴ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁵ 29 Del. C. § 10005(c).

⁶ *Judicial Watch*, 267 A.3d at 1008-1012.

⁷ 29 Del. C. § 10003(m).

⁸ *Id.*

administrative fees may not include any cost associated with the public body’s legal review of whether any portion of the requested records is exempt from FOIA. 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.”⁹ 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.”¹⁰ The public body is to waive one hour of the administrative fees incurred for processing the request.¹¹ “Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.”¹²

In this instance, the City has not provided any sworn evidence to support that its cost estimate met FOIA’s requirements, including the one hour that is free of charge and assessing the fees of the lowest-paid employee capable of performing this work.¹³ As the public body has the burden of proof, we are compelled to find that the City violated FOIA by failing to support that its cost estimate for request 2025-60 was compliant with FOIA.¹⁴ We recommend that, within the timeframes provided in Section 10003, the City review its cost estimate for request 2025-60 in light of this Opinion, and provide a revised estimate, if appropriate under FOIA.

CONCLUSION

For the reasons set forth above, we conclude that the City violated FOIA by failing to demonstrate its cost estimate was compliant with FOIA’s fee provisions. However, we find no violation with respect to the remaining claims.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *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).

¹² 29 *Del. C.* § 10003(m)(2).

¹³ *See Del. Op. Att’y Gen.* 24-IB19, 2024 WL 2982357, at *3-4 (May 22, 2024); *Del. Op. Att’y Gen.* 22-IB45, 2022 WL 17732512, at *2-3 (Nov. 28, 2022).

¹⁴ 29 *Del. C.* § 10005(c).

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Gregory A. Morris, City Solicitor