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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB47

September 29, 2025

VIA EMAIL

Michael Ryan
mjryan@gmail.com

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

Dear Mr. Ryan:

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 record.

BACKGROUND

On August 1, 2025, you submitted a FOIA request to the DSP for “a copy of the report from a complaint [you] filed against someone who has been harassing [you].”¹ The request identified the officer who took the complaint and the report number. On August 4, 2025, the DSP denied access to this report pursuant to the exemption for investigatory files for criminal law enforcement purposes under 29 *Del. C.* § 10002(o)(3). This Petition followed.

¹ Petition.

In the Petition, you assert that you made a complaint in October 2024 over the telephone to the officer and although you are a victim, you have learned you were not listed as a victim on this report. You have not had the opportunity to review the report, but you believe that as a victim, you should be permitted to view the report. On this basis, you request an exception to the investigatory files exemption.

On September 9, 2025, the DSP, through its legal counsel, replied to the Petition (“Response”). The DSP argues that it properly cited the exemption for investigatory records for criminal law enforcement purposes under 29 *Del. C.* § 10002(o)(3), as records of law enforcement incidents, including police reports, fall under this exemption. The DSP states that it cannot make an exception, as you are not listed as a victim on the report.

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.”² 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 for a police report documenting a verbal complaint, the DSP asserted 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 of criminal investigations are “categorically excluded from the scope of FOIA.”⁶ We determine that the DSP’s denial of access to this report under the investigatory files exemption is proper, as police reports are part of the investigatory file.⁷ The investigatory files exemption

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

³ 29 *Del. C.* § 10003(a).

⁴ 29 *Del. C.* § 10005(c).

⁵ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁶ *Gannett Co. v. Del. Crim. Justice Info. Sys.*, 768 A.2d 508, 515 (Del. Super. 1999) *aff’d* 765 A.2d 951 (Del. 2000) (citing *Nasir v. Oberly*, 1985 WL 189324, at *1 (Del. Super. Dec. 5, 1985)); *see also Atamian v. Bahar*, 2002 WL 264533, at *1 (Del. Super. Feb. 22, 2002).


⁷ *Del. Op. Att’y Gen.*, 21-IB07, 2021 WL 2447723, at *1 (Mar. 24, 2021).

attaches as soon as a public body is made aware of a potential issue,⁸ and it does not contain an exception for these circumstances.⁹

CONCLUSION

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

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: Joseph C. Handlon, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

⁸ *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *3 (Del. Ch. Nov. 20, 1980).

⁹ FOIA does not prescribe whether a person is entitled to records that pertain to that person; FOIA merely mandates what records are public and must be made available to Delaware citizens through the FOIA request process. *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.”).