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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB55

October 31, 2025

VIA EMAIL

James C. Skroupa
james.skroupa3640@gmail.com

RE: FOIA Petition Regarding the Delaware Office of Management and Budget

Dear Mr. Skroupa:

We write regarding your correspondence alleging that the Delaware Office of Management and Budget (“OMB”) violated the Delaware 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 regarding whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we find that the OMB did not violate FOIA by denying access to the requested records.

BACKGROUND

On September 30, 2025, you submitted a records request to the OMB seeking contract information about certain programs and activities. The OMB denied this request, because FOIA provides “for ‘citizen’ access to public records,” and “it has been determined that you are not a citizen of the State of Delaware.”¹ You then filed this Petition, arguing that the OMB’s response was improper, because you believe that state citizenship restrictions on FOIA violate the U.S. Constitution.

¹ Petition.

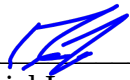
DISCUSSION

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 U.S. Supreme Court has found that a citizens-only FOIA statute, like Delaware's FOIA statute, does not violate the Privileges and Immunities Clause or the dormant Commerce Clause of the U.S. Constitution.⁴ The factual record indicates, and you do not dispute, that you are not a citizen of Delaware.⁵ The OMB does not have a legal obligation to provide access to public records in response to a FOIA request from a noncitizen.⁶ Thus, we conclude that the OMB's denial of your FOIA request based on the lack of Delaware citizenship was appropriate.

CONCLUSION

For the foregoing reasons, we conclude that the OMB did not violate FOIA by denying access to the requested records due to your lack of state citizenship.⁷

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Veda D. Wooley, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

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

³ 29 Del. C. § 10003(a).

⁴ *McBurney v. Young*, 569 U.S. 221, 226-37 (2013).

⁵ Petition.

⁶ See e.g., *Del. Op. Att'y Gen.* 21-IB11, 2021 WL 2144533, at *2 (May 12, 2021); *Del. Op. Att'y Gen.* 16-IB20, 2016 WL 5888776, at *5 (Sept. 30, 2016) (determining Delaware's FOIA statute only guarantees access to public records to citizens in light of *McBurney*).

⁷ While we have decided to issue a determination here as a courtesy, we feel compelled to note that as a noncitizen, you also may not have the right to utilize the provisions in Section 10005, including the petition process.