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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB65

December 19, 2025

VIA EMAIL

Gordon Putnik
gsputnik3@hotmail.com

RE: FOIA Petition Regarding New Castle County

Dear Mr. Putnik:

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 by denying access to the requested records.

BACKGROUND

On November 3, 2025, you submitted a FOIA request for the following items related to an arrest and charges that have since been dismissed: (1) all police body camera and dash camera footage from responding officers during a certain timeframe on March 12-13, 2025, including pre-arrival, on scene, arrest, and post-arrest footage; (2) 911 audio recordings, CAD logs, dispatcher notes, call detail histories, and radio traffic related to this incident during requested timeframe; (3) all the transport video footage from police body camera and dash camera of responding officers from the patrol car until custody was transferred; and (4) all station, intake, sally-port, booking area, hallway, and holding cell video footage for March 12-13, 2025 and cell assignment logs and time stamps. The Police and Emergency Communications Divisions of the County's Department of Public Safety both responded to the requests, stating that while FOIA requires disclosure of a broad range of documents, it is not without limits, and in this case, your request must be denied

because the requested records fall directly within the scope of the exemption for investigatory files compiled for purposes of civil or criminal law enforcement. This Petition followed.¹

In the Petition, you argue that the charges were dismissed, and no active prosecution exists with respect to these requested records. You allege that the County improperly denied your requests as too broad and suggested you need a subpoena to obtain the records. As a case is not pending, you argue that FOIA, not a subpoena, is the appropriate mechanism for obtaining these records. You also allege that the requests are narrowly tailored in compliance with FOIA.

On December 3, 2025, the County, through its legal counsel, responded to your Petition. The County points out that neither response cited to the request being overly broad nor requiring a subpoena. However, the County asserts the requested records were properly withheld under 29 *Del. C.* § 10002(o)(3) and 29 *Del. C.* § 10002(o)(17). The County argues that the investigatory files exemption applies here, as the records were all created because of this criminal law enforcement incident. Although the exemption in Section 10002(o)(17) was not specifically cited in its initial response, the County also argues that “‘all station, intake, sally-port, booking area, hallway and holding cell video footage’ would be exempt under [29 *Del. C.* § 10002(o)(17)] as their disclosure would jeopardize the security and safety of the New Castle County Police station.”²

In addition, the County included two affidavits with its Response. The FOIA coordinator for the Emergency Communications Division attests that the 911 audio recordings, CAD logs, dispatcher notes, and call detail histories were part of the investigatory files compiled for civil or criminal law enforcement purposes. The FOIA coordinator for the Division of Police states under oath that the remaining records were part of the investigatory files compiled for civil or criminal law enforcement purposes. The Police FOIA coordinator also attests that “[t]he video footage requested is of the secure areas of the building where individuals under arrest or detention are housed and processed,” and “[t]he footage shows security protocol used in those areas as well as the physical layout of the secure areas.”³

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 FOIA requires that citizens be

¹ The Petition also included claims regarding a previous request in March 2025, which were dismissed as untimely filed.

² Response.

³ *Id.*

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

provided reasonable access to and reasonable facilities for the copying of public records.⁵ The public body has the burden of proof to justify its denial of access to records.⁶ In certain circumstances, a sworn affidavit may be required to meet that burden.⁷

The Petition claims that the requests were improperly denied as overly broad or requiring a subpoena. However, neither response to the November 3, 2025 request cites these reasons as rationale for the denial. Rather, the County argues that the records are exempt pursuant to Section 10002(o)(3) pertaining to investigatory files compiled for purposes of civil or criminal law enforcement. Section 10002(o)(3) 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.” “[F]or purposes of FOIA, the investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”⁸ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.⁹

This request seeks the law enforcement records arising from the County police response to a 911 call reporting an incident at a particular property;¹⁰ such calls, on their face, would initiate police investigation for civil or criminal law enforcement purposes.¹¹ As further support, the County provides affidavits from each division’s FOIA coordinator attesting the requested records within their respective custody are part of investigatory files compiled for civil or criminal law

⁵ 29 *Del. C.* § 10003(a).

⁶ 29 *Del. C.* § 10005(c).

⁷ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁸ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

⁹ *News-Journal Co. v. Billingsley*, 1980 WL 3043, at *2-3 (Del. Ch. Nov. 20, 1980) (determining that the investigatory files exemption attaches as soon as a public body is made aware of a potential issue and the exemption survives after the investigation is completed); *see also Del. Op. Att’y Gen.* 17-IB47, 2017 WL 4652343, at *1 (Sept. 22, 2017); *Del. Op. Att’y Gen.* 05-IB16, 2005 WL 2334345, at *2 (Jun. 22, 2005); *Del. Op. Att’y Gen.* 98-IB13, 1998 WL 910199, at *1 (Dec. 8, 1998).

¹⁰ Response.

¹¹ *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).”).

enforcement purposes. Thus, the requested records are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).

Additionally, we find that although the County did not cite the security exemption in its initial response to the request, the request for “station, intake, sally-port, booking area, hallway and holding cell video footage” is also subject to this exemption under Section 10002(o)(17). The County is encouraged to fully assert the rationale for denying a request in its response to the requesting party.¹²

The County maintains that its video footage of the station is exempt under 29 *Del. C.* § 10002(o)(17)(a). Section 10002(o)(17) specifically states it protects records “which could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual. . . ,” including records of any building or structure operated by the State or a political subdivision, the disclosure of which would reveal the building’s surveillance techniques.¹³

The Supreme Court of New Jersey considered a FOIA request for surveillance video under its security exemption, which is similar to Delaware’s exemption and exempts disclosure of “security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.”¹⁴ The Court determined that security camera footage showing the parking lot of a municipal building was exempt from disclosure by this language, pointing out that “[i]nformation that reveals the capabilities and vulnerabilities of surveillance cameras that are part of a public facility’s security system is precisely the type of information that the exceptions meant to keep confidential in furtherance of public safety.”¹⁵ The court explained that it “takes no stretch of the imagination to realize that that [release of security camera video] would make it possible for any person to gather the information necessary to dismantle the protection provided by such security systems.”¹⁶

¹² See, e.g., *Del. Op. Atty. Gen.* 22-IB16, 2022 WL 1547876, at *3 (Apr. 29, 2022); *Del. Op. Atty. Gen.* 19-IB44, 2019 WL 4538330, n. 19 (Aug. 12, 2019); *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, n. 37 (Mar. 10, 2017) (“While, in this instance, we have determined that DNREC’s denial of your request was indeed authorized by FOIA, we nevertheless caution DNREC to give careful consideration to the reason(s) provided, pursuant to 29 *Del. C.* § 10003(h)(2), for any FOIA denial.”).

¹³ 29 *Del. C.* § 10002(o)(17).

¹⁴ *Gilleran v. Twp. of Bloomfield*, 149 A.3d 800, 807 (N.J. 2016).

¹⁵ *Id.* at 809.

¹⁶ *Id.* at 810.

Similar concerns are presented here. The Police FOIA coordinator attests that the “video footage requested is of the secure areas of the building where individuals under arrest or detention are housed and processed,” and the “footage shows security protocol used in those areas as well as the physical layout of the secure areas.”¹⁷ Permitting access to this surveillance footage would allow requesting parties to stitch together a comprehensive view of the security cameras’ angles, timing, coverage, and quality, in addition to the movements of the people therein, jeopardizing the security of the building and its occupants. Section 10002(o)(17) is intended to protect such information from disclosure, and we determine that the County appropriately denied your request for the video footage on this additional basis.

CONCLUSION

Based on the foregoing, we conclude that the County did not violate FOIA by denying access to the requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Colleen K. Norris, Assistant County Attorney

¹⁷ Response, Aff. of New Castle County Police Department Sergeant Andrea Botterbusch dated Dec. 3, 2025.