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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB01

January 9, 2026

VIA EMAIL

Talia Mann
manntalia88@gmail.com

RE: FOIA Petition Regarding the Delaware State Housing Authority

Dear Ms. Mann:

We write in response to your correspondence dated November 23, 2025, alleging that the Delaware State Housing Authority 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 Authority violated FOIA by failing to meet its burden to demonstrate that access to the tenant program application records was properly denied under FOIA. The remaining claims in the Petition do not constitute violations of FOIA.

BACKGROUND

On October 21, 2025, you submitted a FOIA request to the Authority, seeking (1) a video recording of your hearing conducted on October 8, 2025, including any transcripts produced; (2) all your tenant intake forms for the Project Based Housing Choice Voucher transmitted to the Authority on February 7, 2025 and thereafter; and (3) the Authority's notes and files related to you. On November 12, 2025, the Authority replied that this request was denied "as the documents you requested are exempt from [FOIA]" and advised you to contact the Public Housing Authority for information on viewing your application file.¹ On November 3, 2025, you submitted a second

¹ Petition, p. 215.

request for your “complete 2024 LIHTC application” for a residential community.² On November 21, 2025, the Authority stated it had no responsive documents and advised you to contact the property management office for the community. This Petition followed.

In the Petition, you argue that the withholding of your tenant program application records submitted to the Authority is improper because the information is not private, as these records pertain to you. You also assert that the Authority was obligated to provide records prior to your hearing and is required by the related federal programs to provide certain records but has refused to do so. You allege that the denial of your requests by email, rather than a formal letter, is improper under FOIA. You further contend that the Authority has disregarded the retention laws applicable to these requested records. Finally, you retracted your request seeking the oral or written transcript of your hearing, which you intend to pursue through the proper court.

The Authority, through its legal counsel, replied to this Petition on December 18, 2025 (“Response”). The Authority included the affidavit of the Director for Housing Management who attests that to the best of the Director’s knowledge, information, and belief, the Authority conducted a reasonable and good faith search for responsive records; any records withheld were in accordance with applicable exemptions; and the statements in the Response are accurate. The Authority argues that the requested materials do not meet the definition of public records, “because they are either exempt from disclosure, do not relate to public business in a manner contemplated by FOIA, or are maintained for internal, administrative, or deliberate purposes not subject to mandatory disclosure.”³ The Authority further asserts that you were provided with access or sent documents which you now claim are improperly withheld, and FOIA does not require a public body to repeatedly reproduce the same records. The Authority maintains that the Public Housing Authority attempted scheduling a time for you to inspect your file in person, including the informal hearing recording and that FOIA allows inspection as a permissible and sufficient form of access. As the Authority’s policy is to not produce transcripts of informal hearings, the Authority alleges it had no obligation to produce a written transcript and allowing inspection of the recording is sufficient access under FOIA. The Authority contends the remaining issues are outside the scope of FOIA and not appropriately considered.

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 provided reasonable access to and reasonable facilities for the copying of public records.⁵ The

² *Id.*, p. 236.

³ Response.

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

⁵ 29 Del. C. § 10003(a).

public body has the burden of proof to justify its denial of access to records and to otherwise demonstrate compliance with FOIA.⁶ In certain circumstances, a sworn affidavit may be required to meet that burden.⁷

As an initial matter, the authority of this Office is limited to determining alleged violations of the FOIA statute.⁸ Your claims pertaining to the Authority's compliance with records retention requirements and the Authority's obligations to furnish documents related to its hearing procedures or other federal programs exceed the scope of what this Office may consider under a petition initiated pursuant to 29 Del. C. § 10005.

With regard to your FOIA allegations, the Petition alleges that the Authority's responses to the requests – delivered in the form of an email rather than a formal letter – constitute a violation of FOIA. FOIA does not specify that a public body's responses be issued in a letter format.⁹ We find no violation in this regard.

With respect to the Petition's remaining claim regarding the Authority's refusal to provide the tenant program application records, the Authority failed to meet its burden to justify its denial of access to these records. The *Judicial Watch, Inc. v. University of Delaware* case provides that Section 10005(c) “requires a public body to establish facts on the record that justify its denial of a FOIA request.”¹⁰ “[U]nless it is clear on the face of the request that the demanded records are not subject to FOIA, to meet the burden of proof under Section 10005(c), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”¹¹ Generalized assertions in the affidavit will not meet the burden.¹² For example, the Superior Court of Delaware determined that an affidavit outlining that legal counsel inquired about several issues, without indicating who was consulted, when the inquiries were made, and

⁶ 29 Del. C. § 10005(c).

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

⁸ 29 Del. C. § 10005(e).

⁹ *Del. Op. Att’y Gen.* 24-IB10, 2024 WL 1132323, at *2 (Feb. 21, 2024) (“FOIA does not require a response to a request to be issued in the format of a formal letter. . .”).

¹⁰ 267 A.3d 996, 1010 (Del. 2021).

¹¹ *Id.* at 1012.

¹² *Judicial Watch, Inc. v. Univ. of Del.*, 2022 WL 2037923, at *3 (Del. Super. Jun. 7, 2022) (“The Court finds that the generalized statements in the Affidavit do not meet ‘the burden to create a record from which the Superior Court can determine whether the University performed an adequate search for responsive documents.’”).

what, if any documents, were reviewed, was too generalized to meet this standard.¹³ In addition to these standards, when records are withheld, the reasons for withholding the records must be stated in the response to the requesting party.¹⁴ Depending on the asserted exemptions, an affidavit may be required to support the application of the exemptions.¹⁵

The Authority indicated in its first initial response that the tenant intake forms for the Project Based Housing Choice Voucher transmitted to the Authority were exempt and recommended that you contact the Public Housing Authority to review your “application file.”¹⁶ The Authority indicated in its second initial response that it had no records responsive to the request for your “complete 2024 LIHTC application.”¹⁷

The Authority broadly asserts that it provided access to the records requested on multiple occasions prior to the Petition, but the Authority fails to explain the factual basis for this claim, including explaining what records were produced, when, and under what circumstances. Even if we were to agree that previous productions might discharge the Authority’s duty to supply these records in response to these FOIA requests, the factual basis is not sufficiently articulated to consider such a determination here.

Additionally, the Authority’s offer to allow you to inspect your application file including the recording of the informal hearing is insufficient, because it lacks detail about the records to be produced, including whether the tenant program application records are part of the file the Authority is to make available to you. The Authority’s assertion that because of this inspection offer, “the Public Housing Authority has therefore fully satisfied its obligations under Delaware FOIA by providing reasonable access to non-exempt records while lawfully withholding or limiting production of materials outside the FOIA Act’s scope” indicates this offered disclosure is not a full production of records; yet, it is the Authority’s burden to articulate and justify the basis for withholding any records. The affidavit’s broad assertion – that “[a]ny records withheld or redacted were done so in accordance with applicable exemptions under [FOIA] and other relevant law” – is not sufficient.¹⁸

To the extent that the Authority maintains that it has no responsive records to the request seeking the “LIHTC application,” the Authority, to meet its burden of proof, must explain under oath the efforts taken to determine whether there are responsive records and the results of those

¹³ *Id.*

¹⁴ 29 *Del. C.* § 10003(h)(2).

¹⁵ *See Flowers v. Office of the Governor*, 167 A.3d 530, 549 (Del. Super. 2017).

¹⁶ Petition, p. 215.

¹⁷ *Id.*, p. 236

¹⁸ Response, Aff. of Director for Housing Management dated Dec. 18, 2025.

efforts. The conclusory statements in the affidavit – that the Authority “conducted a reasonable and good-faith search for records responsive to the FOIA request, consistent with its obligations under 29 *Del. C.* § 10003” – is too generalized to meet the burden.¹⁹

As such, we find that the Authority violated FOIA. We recommend that the Authority review its records and provide a supplemental response to you within the timeframes set forth in Section 10003. It is recommended that the Authority delineate, by individual category, the records to be produced, the records withheld, and the rationale for denying access to each category, including any exemptions invoked, if applicable. To the extent that the Authority finds any such records, or parts thereof, are appropriately disclosed under FOIA, it is recommended that the Authority allow access to such records within the timeframes of Section 10003.

CONCLUSION

For the reasons set forth above, we conclude that the Authority violated FOIA by failing to meet its burden to demonstrate that access to the tenant program application records was properly denied under FOIA. The remaining claims in the Petition do not constitute violations of FOIA.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Bryce A. Gates, Esq., General Counsel, Delaware State Housing Authority

¹⁹ *Id.*