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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB02

January 9, 2026

VIA EMAIL

Tymir Thompkins
tymirnafeese@gmail.com

RE: FOIA Petition Regarding the City of Wilmington

Dear Tymir Thompkins:

We write in response to your correspondence, alleging that City of Wilmington 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 did not violate FOIA by denying access to the requested records.

BACKGROUND

On December 9, 2025, you submitted a FOIA request to the City seeking records of your interview for a certain City position. You stated that there were five interview panelists, and you would like to receive "the paperwork of each panelist."¹ The City denied access to these records, citing 29 Del. C. § 10002(o)(1) for personnel files, the disclosure of which would constitute a violation of personal privacy under FOIA or another state or federal law. This Petition followed.

¹ Petition.

The Petition alleges that this personnel file exemption was misapplied to your request.² You argue that you are only requesting your own records, and releasing records to you does not violate any third party's privacy. You also contend that FOIA requires that its exemptions be applied narrowly, and interview evaluation sheets and written notes are not employee personnel files; rather, these materials are "hiring decision materials, which are presumptively public."³ You assert that rather than withholding these records, the City should have provided a redacted production without the exempt information, such as panelists' names, other applicants' information, and reusable exam questions.

The City, through its legal counsel, replied to this Petition ("Response"). The City argues its assertion of the personnel file exemption was appropriate here, as you are presently employed by the City, and your application to this position constituted seeking a promotion, which would meet the definition of personnel files adopted in FOIA precedent. However, the City acknowledges that the interview panelists' notes would not become part of your personnel file, but instead, are kept within a separate recruitment file, which the City argues is a distinction without a difference. The City states that in addition to the personnel file exemption, FOIA also exempts records under the common law right of privacy. The City contends that "the discussions of qualifications and competencies of applicants are subject to a significant privacy interest," noting that these types of records are exempt for the same reasons that a public body is authorized to meet privately to discuss an individual's qualifications for public employment under the open meeting exceptions.⁴ The City asserts that the fact you seek only records pertaining to you has no bearing on the disclosure of records, because the identity of the requesting party has no bearing on a request; under FOIA, either a record is public, or it is not. The City further clarifies that this does not mean you have no recourse to review your own personnel file; rather, any entitlement to your personnel file is outside the scope of FOIA and this petition process.

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."⁵ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁶ The

² The Petition articulates a list of specific hiring records sought that were not stated in your December 9, 2025 request. The request evaluated by this Opinion is the request submitted on December 9, 2025.

³ Petition.

⁴ Response.

⁵ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁶ 29 Del. C. § 10003(a).

public body has the burden of proof to justify its denial of access to records.⁷ In certain circumstances, a sworn affidavit may be required to meet that burden.⁸

The Petition alleges that the interview panelists' scoring sheets and notes are not personnel files exempted from disclosure under Section 10002(o)(1). As the City acknowledged these records are not part of your personnel file, we agree that the personnel file exemption does not apply to these circumstances.

Instead, we find that these records are not public pursuant to Section 10002(o)(6), which excludes records that are exempt from disclosure under common law. This Office has found that these types of hiring records are protected by the common law right of privacy and any minimal public interest in such records does not outweigh the significant privacy interest.⁹ Thus, consistent with these previous determinations, we find that the requested records are exempt.¹⁰ The fact that the requested records pertain to you does not alter the application of this exemption.¹¹

⁷ 29 Del. C. § 10005(c).

⁸ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁹ See, e.g., *Del. Op. Att'y Gen.* 24-IB30, 2024 WL 3916854, at *2 (Aug. 9, 2024) (determining a public body appropriately denied a request for correspondence relating to the hirings of eight positions to which the petitioner applied); *Del. Op. Att'y Gen.* 05-IB20, 2005 WL 2334348, at *2-3 (July 7, 2005) (“Although FOIA does not have an express exemption for documents relating to the job applicant process, the statute authorizes a public body to meet in executive session to discuss ‘an individual citizen’s qualifications to hold a job.’ 29 Del. C. § 10004(b)(1). This exemption for executive session would have little if any practical meaning if the job application packets reviewed by the members of the public body, and their notes or scoring cards, were public records under FOIA.”).

¹⁰ Although we find that these records were withheld for an authorized reason, we note that the City asserted the rationale of Section 10002(o)(6)’s common law right of privacy for the first time in its Response to your Petition and respectfully caution the City to give due consideration to the reasons asserted in its denials in the future. See, e.g., *Del. Op. Atty. Gen.* 22-IB16, 2022 WL 1547876, at *3 (Apr. 29, 2022); *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.”).

¹¹ *Del. Op. Att'y Gen.* 24-IB30, 2024 WL 3916854, n. 14 (Aug. 9, 2024); see also *Del. Op. Att'y Gen.* 18-IB13, 2018 WL 1405829, at *1 (Mar. 6, 2018) (“Importantly, Delaware’s FOIA provides that “[a]ll public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body.” In other words, if a record meets FOIA’s definition of “public record,” then the public body must make the record available for inspection and copying to *any* Delaware citizen who requests access thereto. Similarly, if the record does *not* meet FOIA’s definition of “public record,” then Delaware’s FOIA does not

CONCLUSION

For the reasons set forth above, we conclude that the City 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: John D. Hawley, Assistant City Solicitor

mandate its disclosure and a public body cannot be found to have violated FOIA for failing to disclose the record *in response to a FOIA request.*") (emphasis in original).