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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB05

February 3, 2026

VIA EMAIL

James Eaves
jameseaves2000@gmail.com

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

Dear Mr. Eaves:

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 video footage.

BACKGROUND

On December 6, 2025, you submitted a FOIA request to the DSP for body-worn camera footage related to two court cases identified by case number.¹ The DSP denied this request, citing the exemptions for investigatory file records for criminal law enforcement purposes under 29 Del. C. § 10002(o)(3); criminal records under 29 Del. C. § 10002(o)(4); and records exempt from disclosure by statute under 29 Del. C. § 10002(o)(6), specifically Title 11, Chapters 85 and 86 of the Delaware Code. This Petition followed.

¹ Petition.

In the Petition, you contend that the DSP's denial of this request is improper, because the DSP did not make a particularized showing that the disclosure is prohibited by law or would cause identifiable harm. You state that the requested recording pertains to you and the officer involved, and no juveniles appear in the footage. You state that the DSP acknowledged the investigation is complete. The purpose of your request is to obtain an accurate visual record of the encounter to evaluate potential civil claims arising from the officer's use of force. You contend that denying access to records on the grounds they are adverse, embarrassing, or would result in potential liability is not permissible under FOIA. You argue that the DSP failed to establish that the footage could not be released in full, or with narrowly tailored redactions, if necessary.

On January 15, 2026, the DSP, through its legal counsel, replied to the Petition ("Response"). The DSP contends that it is well established that records pertaining to law enforcement incidents, including body-worn camera footage, fall within the investigatory files exemption. The DSP argues that because this request involves footage related to criminal incidents, it also triggers the criminal and confidential record exceptions pursuant to 29 Del. C. § 10002(o)(4) and § 10002(o)(6), including 11 Del. C. Chapters 85 and 86.

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

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." The application of this exemption does not require a public body to show that disclosure is prohibited or would result in identifiable harm. "[T]he investigatory exemption attaches as soon as an agency is first made aware of a potential issue."⁶ This exemption is not limited to pending investigations

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

and continues to apply after an investigation is closed.⁷ Here, this request seeks the body-worn camera footage related to a law enforcement encounter; such footage, on its face, pertains to an investigation for civil or criminal law enforcement purposes.⁸ Thus, the requested footage is considered part of the investigatory files and is fully exempt from disclosure pursuant to 29 Del. C. § 10002(o)(3).

CONCLUSION

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

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

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

⁷ *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).

⁸ *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).”).