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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB10

February 25, 2026

VIA EMAIL

Brenden Moore
brendenwynnmoore@gmail.com

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

Dear Mr. Moore:

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 records.

BACKGROUND

On June 19, 2025, you submitted a FOIA request to the DSP. The request described an incident occurring between you and a second vehicle on a roadway, which resulted in a police officer response. In addition to asking about procedural processes, you sought a list of records related to this incident, including body and dash camera footage, incident or police reports, radio communications or dispatch records, officer identification information, vehicle registration information for the other involved vehicle, and any reports or documentation related to your visit to DSP Troop 9.¹ You also requested records of any traffic stops involving you in the Middletown

¹ Petition.

area in the past six months. The DSP denied this request on July 7, 2025. On November 19, 2025, you submitted this same request, noting that the investigation is now over and the request can no longer be denied based on a pending investigation. The DSP replied on December 15, 2025, asserting to the extent that the DSP had existing records, they would be exempt from disclosure under FOIA pursuant to the exemptions under 29 Del. C. § 10002(o)(3) for investigatory file records for criminal law enforcement purposes and 29 Del. C. § 10002(o)(9) for records pertaining to pending or potential litigation. The response noted that the DSP is not required to compile data, answer questions, or create records that do not exist. The DSP also stated that the investigatory files exemption continues to apply even after the investigation is completed. This Petition followed.

In the Petition, you contend that the DSP improperly denied your request twice due to an unspecified investigation. You believe that the DSP has opened bad faith investigations to purposefully delay or prevent the disclosure of the requested records under FOIA.

On February 6, 2026, the DSP, through its legal counsel, replied to the Petition (“Response”). The DSP contends that it is well established that any records pertaining to traffic and criminal incidents, including video footage taken by law enforcement, fall within the investigatory files exemption. The DSP argues that the records you requested, which pertain to a specific traffic incident and other unspecified traffic stops, clearly fall within the investigatory files exception. Further, the DSP points out that your requests indicate that you intend to pursue litigation, noting your statements that you sought some information for civil litigation purposes against the other driver and that any retaliation resulting from your letter would be “further cause” for litigation.² Finally, the DSP asserts that portions of your request seek answers to questions, and FOIA does not require a public body to answer questions.

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.”³ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁴ The public body has the burden of proof to justify its denial of access to records.⁵ In certain circumstances, a sworn affidavit may be required to meet that burden.⁶

² Response.

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

⁴ 29 Del. C. § 10003(a).

⁵ 29 Del. C. § 10005(c).

⁶ *Judicial Watch, Inc.*, 267 A.3d at 1012 (“[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),

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.” “[T]he investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”⁷ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.⁸ Here, this request seeks records related to a law enforcement encounter during a traffic incident and other potential law enforcement encounters through unidentified traffic stops; such records, on their face, pertain to an investigation for civil or criminal law enforcement purposes.⁹ Thus, the requested records are considered part of law enforcement investigatory files and are 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 records.

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”).

⁷ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

⁸ *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).

⁹ *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).”).

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