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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB11

March 10, 2026

VIA EMAIL

Shané Darby
snidarby@gmail.com

RE: FOIA Petition Regarding the Delaware Department of Correction

Dear Ms. Darby:

We write in response to your correspondence alleging that the Delaware Department of Correction 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 Department violated FOIA by failing to comply with the statute's requirements for asserting the need for additional time for this request. However, the Department did not violate FOIA by stating that prepayment of a cost estimate would be required.

BACKGROUND

On December 7, 2025, you submitted a FOIA request to the Department seeking all records related to the "closure, proposed closure, evaluation, transition, or operational changes involving the Plummer Center."¹ You sought the following types of records from January 1, 2021 to the present: emails, text messages and instant messages, letters, correspondence, internal memoranda and directives, reports, studies, analyses, assessments, meeting agendas and notes, briefing materials, draft or final policies, planning or transition documents, staffing or financial evaluations, internal presentations, communications with consultants, contractors, or external agencies, and any

¹ Petition.

attachments to any of these records.² You asked for the records of all Department staff including the subject matters of “closure or potential closure of the Plummer Center; [p]lanning, proposals, studies, or evaluations regarding closure; [i]mpacts on staff, operations, programs, or residents; [t]ransition plans or relocation of functions; [c]ommunications about reasons, justification, or process of closure; and [p]ublic messaging, press preparation, or stakeholder notifications.”³ The request included some optional, nonexclusive keywords for the search.

The Department responded five days later, noting that it would be gathering a list of employees relevant to the timeframe and submitting a request to the Delaware Department of Technology and Information (“DTI”) to search for communications. The Department stated that after DTI notifies you of the estimated cost and you pay this cost, the records would then be released to the Department. Upon receipt, the Department would then review and redact records, at an hourly rate, which was billable after the first hour. The Department asserted that this request would take longer than fifteen business days. You followed up on January 16, 2026. You received no additional response from the Department, and this Petition followed.

In the Petition, you contend that the Department improperly processed this request, as the Department did not provide a projected completion date or timeframe for fulfilling the request and conditioned the release of records on prepayment to DTI, despite failing to provide a timely cost estimate or demonstrate that reasonable efforts to process the request were underway. Rather, more than two months after submission, the Department had not produced any responsive records, provided a cost estimate, given a timeline for completion, or issued a denial of the request.

On February 18, 2026, the Department, through its legal counsel, replied to the Petition (“Response”). The Department asserts that since its initial acknowledgement and response to the request in December, it has been diligently conducting a factual investigation to identify the Department employees who may have authored or received responsive emails. The Department estimated that seventy employees may have authored or received emails and sent this request dated February 12, 2026 to DTI, which is the agency that maintains Department’s emails systems. The Department states that “[t]o date however, DTI has not produced any potentially responsive emails nor provided [the Department] or Petitioner with a cost estimate or good faith estimate as to the amount of time it will take to fulfill the request.”⁴ The Department also notes it is experiencing significant resource constraints, including a recent staffing shortage. The Department argues that because you have not been denied any records and the Department complied with Section 10003 by noting the request would take longer than fifteen business days to fulfill, the petition should be dismissed on grounds of prematurity. The Department contends that to “the extent that a *de minimis* infraction occurred by way of a communication shortcoming, that infraction is cured by the instant communication of the above outlined facts [in this Response].”⁵

² *Id.*

³ *Id.*

⁴ Response.

⁵ *Id.*

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.”⁶ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁷ The public body has the burden of proof to justify its denial of access to records.⁸ In certain circumstances, a sworn affidavit may be required to meet that burden.⁹

A public body is required to “respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof.”¹⁰ Section 10003(h)(1) permits a public body to inform a requestor that a response will take more than the requisite fifteen days if the request is for voluminous records, requires legal advice, or a record is in storage or archived.¹¹ The public body must inform the requesting party of the authorized reason for the extension and give a good faith estimate of how much additional time is needed to fulfill the request.¹² If authorized fees are necessary to process the request, the public body may present a requesting party with a cost estimate in accordance with Section 10003.

In this case, the Department’s initial response to the request was sent within the fifteen business days and addressed the anticipated delay regarding the requested communications, conveying a reason for the delay that is acceptable under the statute – that those communications are in digital storage, to be retrieved by DTI.¹³ However, the Department did not give a good faith estimate of how much time is needed to fulfill the request. The statute expressly requires such a

⁶ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁷ 29 *Del. C.* § 10003(a).

⁸ 29 *Del. C.* § 10005(c).

⁹ *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), a public body must state, under oath, the efforts taken to determine whether there are responsive records and the results of those efforts.”).

¹⁰ 29 *Del. C.* § 10003(h)(1).

¹¹ *Id.*; see *Del. Op. Att’y Gen.* 20-IB09, 2020 WL 1234452, at *3 (Feb. 27, 2020).

¹² 29 *Del. C.* § 10003(h)(1).

¹³ We note that the Department’s response also did not address the reason for the additional time necessary to fulfill the portions of your request unrelated to DTI communications, such as meeting materials.

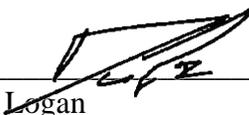
time estimate, and this Office previously made it clear that merely stating that additional time may be needed does not comply with the statute.¹⁴ Accordingly, we find a violation occurred and recommend that the Department, within fifteen business days, provide you with a supplemental response that complies with the statute's requirements for asserting additional time is needed, including a good faith estimate of the time to fulfill the request.

The Petition also alleges that the Department violated FOIA by conditioning the release of the DTI communication records on prepayment. FOIA allows public bodies to require all or a portion of the fees to be paid before any service is performed under the FOIA statute.¹⁵ We therefore find no violation with respect to the request for prepayment of the DTI fees.

CONCLUSION

For the foregoing reasons, we conclude that the Department violated FOIA by failing to comply with the statute's requirements for asserting the need for additional time for this request. However, the Department did not violate FOIA by stating that prepayment of a DTI cost estimate would be required.

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Abigail de Uriarte, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

¹⁴ See *Del. Op. Att'y Gen.* 17-IB51, 2017 WL 4652341, at *3 (Oct. 9, 2017) (finding that the public body's statement "this request may take additional time" does not comply with FOIA's requirements); see also *Del. Op. Att'y Gen.* 16-IB15, 2016 WL 3462346, at *4 (Jun. 10, 2016) (determining that the public body's statement that it was reviewing the records and "would provide a more complete response as soon as practical" violated FOIA, as it did not state a permissible reason or a good faith estimate of how much additional time it required).

¹⁵ 29 *Del. C.* § 10003(m)(5).