



KATHLEEN JENNINGS  
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE  
820 NORTH FRENCH STREET  
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400  
CRIMINAL DIVISION (302) 577-8500  
DIVISION CIVIL RIGHTS & PUBLIC TRUST (302) 577-5400  
FAMILY DIVISION (302) 577-8400  
FRAUD DIVISION (302) 577-8600  
FAX (302) 577-2610

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 26-IB12**

**March 24, 2026**

**VIA EMAIL**

Steven Coleman  
[scolemanhopehouse@gmail.com](mailto:scolemanhopehouse@gmail.com)

**RE: FOIA Petition Regarding New Castle County**

Dear Mr. Coleman:

We write in response to your correspondence, alleging that New Castle County 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 County did not violate FOIA with respect to four items in the request, as alleged in the Petition. The claim related to the first item of the request is moot. The County met its burden of demonstrating it provided the records responsive to the second and third items after an adequate search and properly withheld the records sought in the fourth item pursuant to the investigatory files exemption.

**BACKGROUND**

On February 1, 2026, you submitted a FOIA request to New Castle County. The request sought five categories of records related to code enforcement activity at your property, as follows:

1. The complete Zoom Video Recording of the administrative hearing conducted on October 8, 2025, including any audio, video, chat logs or meta data associated with that hearing.

2. All written minutes, notes, summaries, or transcripts created by County staff in connection with the October 8, 2025 administrative hearing.
3. Internal code enforcement assignment and reassignment records for [the property], including documents identifying:
  - a. The names of assigned officers,
  - b. Dates of assignment or reassignment,
  - c. The internal communications or logs reflecting changes in officer responsibility for this property.
4. All applications, affidavits, supporting documents, and judicial orders related to court ordered search warrants issued or executed in connection with the code enforcement activity of [the property], including materials prepared or submitted by County personnel.
5. All internal communications (including emails, memoranda, or case notes) between code enforcement personnel relating to:
  - a. Compliance determinations;
  - b. Enforcement escalation;
  - c. Post-compliance site actions at [the property].<sup>1</sup>

The County answered this request on February 17, 2026 and provided various responsive records. The County noted that certain documents were considered exempt as criminal investigative files under 29 *Del. C.* § 10002(o)(3). The County also noted that if any nonexempt portions of responsive records exist, they have been provided, after appropriate redaction. The same day, you replied, requesting confirmation of certain information and requesting explanations of certain withholdings. On the next day, you emailed reiterating your inquiries. You also pointed out the multi-year scope of the activity and requested the County explain how the investigatory file exemption could apply across ongoing enforcement activity, and you requested that the reasonably segregable, nonexempt materials be produced. This Petition followed.

In the Petition, you allege that the County violated FOIA by improperly applying the investigatory files exemption and failing to release segregable nonexempt records, including an October 8, 2025 administrative hearing recording; hearing minutes and summaries; officer assignment and reassignment logs; and warrant-related records following execution. You allege that the investigatory files exemption was improperly applied, because the County's enforcement actions spanned multiple years and was not a single, discrete criminal investigation; as such, you do not believe that the records can be categorically withheld as criminal investigatory files under Section 10002(o)(3). You state that the October 8, 2025 hearing was an administrative hearing and not a criminal investigation, and internal officer assignment and reassignment logs are administrative in nature. In addition, you argue that the reasonably segregable, nonexempt portions of warrant applications and supporting affidavits must be produced. You do not believe, based on the County's response, that a segregation was performed. You requested an explanation

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<sup>1</sup> Response.

of how each withheld record meets the exemption, confirmation of whether any criminal investigation was active at the time each record was created, and release of all segregable, nonexempt portions of records.

On March 4, 2026, the County, through its legal counsel, responded to your Petition. For the first two items related to the hearing, the County states it inadvertently failed to send the hearing recording that had been prepared for the initial production. Upon discovering this, the County sent the recording to you, in addition to a copy of the hearing decision. The County states that having provided the recording, “[a]ll information requested and subject to FOIA about the October 8, 2025 hearing has been provided.”<sup>2</sup> For the third item regarding officers’ internal assignment and reassignment records, the County states it does not possess such records, but it did provide each notice of violation or penalty, which contained officer names. Regarding the fourth item related to search warrants, the County states that these materials are exempt under Section 10002(o)(3) as the notices of violation make it plain the lack of compliance may result in criminal charges. Regarding your inquiries, the County notes it is not required by FOIA to answer questions or to create a list of withheld documents and the reasons for the withholdings.

The County enclosed two affidavits with its Response. The first was an affidavit from the acting FOIA coordinator for the Department, who attests to contacting the Code Enforcement division and requesting a search of all code enforcement records for this property. The FOIA coordinator attests to providing you with the records that were located but inadvertently failing to provide the hearing recording. To rectify this error, the coordinator attests to forwarding the recording and a copy of the hearing decision to you on February 26, 2026. The second affidavit is from the Customer Service and Information Technician, who conducted the review of the Code Enforcement division’s records associated with the property. The Technician attests that the “requested information regarding search warrants and related material is part of the investigatory files compiled for civil or criminal law enforcement purposes and is exempt under 29 *Del. C.* § 10002(o)3.”<sup>3</sup> The affidavit listed the records discovered, and the Technician attests that the documents provided represent all responsive documents within the Code Enforcement division's possession that do not otherwise fall under the exception.

## 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.”<sup>4</sup> FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.<sup>5</sup> The

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

<sup>5</sup> 29 *Del. C.* § 10003(a).

public body has the burden of proof to justify its denial of access to records.<sup>6</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>7</sup>

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.”<sup>8</sup> “[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.”<sup>9</sup> Generalized assertions in the affidavit will not meet the burden.<sup>10</sup> 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 what, if any documents, were reviewed, was too generalized to meet this standard.<sup>11</sup>

As a preliminary matter, your requests for explanations are not appropriately considered under FOIA, as FOIA pertains to existing records and does not require a public body to answer questions or create a record to respond to a question.<sup>12</sup> FOIA does not require a public body to create “an index, or any other compilation, as to each record or part of a record denied.”<sup>13</sup> Additionally, the first item of your request, the recording of the October 8, 2025 hearing, was

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<sup>6</sup> 29 Del. C. § 10005(c).

<sup>7</sup> *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

<sup>8</sup> *Id.* at 1010.

<sup>9</sup> *Id.* at 1012.

<sup>10</sup> *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.’”).

<sup>11</sup> *Id.*

<sup>12</sup> *Vanella v. Duran*, 2024 WL 5201305, at \*6 (Del. Super. Dec. 23, 2024) (“[A]s a general matter, a public body has no obligation to create a new record in response to a request. Rather, FOIA requires only the production of existing records possessed or controlled by a public body. That is because one of FOIA’s core aims is to provide the public access to the records that a public body *actively relies upon* in making decisions that affect the community. Records created purely for the purpose of responding to a FOIA request fall outside that aim.”) (emphasis in original).

<sup>13</sup> 29 Del. C. § 10003(h)(2).

provided to you upon the County's discovery of its inadvertent failure to include a copy with the production, per the County's sworn assertions. Thus, the challenge to this first item is moot.

For the second and third items of the request, the County provided sworn affidavits demonstrating the search of its code enforcement records and the results thereof. The Code Enforcement staff attests to locating certain responsive records which were provided, and to providing all responsive records in the division's possession, except those subject to the investigatory files exemption.<sup>14</sup>

For the fourth item regarding search warrant materials, the County argues the records are not public records pursuant to Section 10002(o)(3), which 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." In exercising its code enforcement authority against the subject property, the County's notices of violation it produced cite the County's civil and criminal law enforcement authority; the County also provided a sworn statement that the search warrant records sought in the fourth item were subject to the investigatory files exemption. On the face of the request, it is clear that the warrant documents sought pertain to the law enforcement activity related to this property.<sup>15</sup> The investigatory files exemption is not limited to pending investigations and continues to apply after an investigation is closed.<sup>16</sup> As such, we find the County met its burden to demonstrate the requested search warrant information was fully exempt and not subject to disclosure under Section 10002(o)(3).

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<sup>14</sup> Although the County's initial response to your request was not clear on this point, the affidavit appears to refer to the search warrant materials as the only materials subject to the investigatory files exemption.

<sup>15</sup> *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).").

<sup>16</sup> *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).

**CONCLUSION**

Based on the foregoing, we conclude that the County did not violate FOIA with respect to four items in the request, as alleged in the Petition. The claim related to the first item of the request is moot. The County met its burden of demonstrating it provided the records responsive to the second and third items after an adequate search and properly withheld the records sought in the fourth item pursuant to the investigatory files exemption.

Very truly yours,

/s/ Dorey L. Cole

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Dorey L. Cole  
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

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Patricia A. Davis  
State Solicitor

cc: Maria T. Knoll, Assistant County Attorney