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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 26-IB16

April 16, 2026

VIA EMAIL

Meryem Dede, Esq.
mdede@tideshiftjustice.org

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

Dear Ms. Dede:

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 violated FOIA by failing to demonstrate through sworn statements that the identified portions of your request for records were appropriately denied.

BACKGROUND

On October 22, 2025, you filed three FOIA requests with the DSP, as follows:

1. How many records the State Police have expunged through either the mandatory or automatic expungement process (no need to differentiate) between:
 - a. November 1, 2024 and December 31, 2024; and
 - b. January 1, 2025 and October 1, 2025.

2. How many records the State Police have expunged through any expungement process (no need to differentiate) between:
 - a. November 1, 2024 and December 31, 2024; and
 - b. January 1, 2025 and October 1, 2025.

3. I'd like to know how much the State Bureau of Identification has collected in fees during the following time frames for mandatory expungements under 11 *Del. C.* § 4373(e) (“The State Bureau of Identification may promulgate reasonable regulations and a reasonable fee schedule to accomplish the purposes of this section.”):
 - a. November 1, 2024 and December 31, 2024; and
 - b. January 1, 2025 and October 1, 2025.¹

On March 11, 2026, the DSP responded by providing a link to the Delaware State Police 2024 Annual Report and reproducing a portion of that report which addressed expungements and the Clean Slate section. The DSP stated it would update its response to you with the 2025 statistics once the data is prepared for the 2025 report or the General Assembly. The DSP asserted that it is not required to create records that do not exist, but nonetheless, it preliminarily compiled the 2025 monthly and yearly totals for the mandatory expungement fee collection. This Petition followed.

In the Petition, you contend that the DSP left two portions of your request unanswered, specifically, “how many records the State Police have expunged through either the mandatory or automatic expungement process (no need to differentiate) between: . . . (2) January 1, 2025 and October 1, 2025” and “how many records the State Police have expunged through any expungement process (no need to differentiate) between: . . . (2) January 1, 2025 and October 1, 2025.”² While awaiting the DSP’s response, you assert that you requested data from the Office of the Governor, which you received in January 2026. You contend that because of the data you received from the Office of the Governor, the DSP appears to have the “exact data on the number of expungements they issued not just for January 1, 2025 through October 1, 2025,” but “for the entire calendar year of 2025” and “these expungements delineated by type, whereas my request did not ask [the DSP] to differentiate between automatic expungements and mandatory expungements, which [the DSP] previously claimed they are unable to do.”³ In light of this discrepancy, you requested our Office review the DSP’s response “and determine whether the agency conducted an adequate search and complied with its obligations under the state’s FOIA statute.”⁴

¹ Petition.

² *Id.*

³ *Id.*

⁴ *Id.*

On March 27, 2026, the DSP, through its legal counsel, replied to the Petition (“Response”). The DSP points out that it provided you with the 2024 data and stated it would supplement its response once the 2025 data become available. The DSP argues that just because you were able to obtain responsive information which is “perhaps preliminary in nature” from another public source does not make the DSP’s response invalid or inappropriate.⁵ The DSP was planning on supplementing its response once the data had been finalized and set forth in a public record, as it did previously with the 2024 data. The DSP further notes that it is “not surprising that executive agencies report various information and data to the Office of the Governor” and “FOIA does not *prevent* state agencies, or [the Governor’s Office], from releasing preliminary data or answering inquiries posed by constituents and interested stakeholders (assuming no other legal bar).”⁶

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.”⁷ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁸ The public body has the burden of proof to justify its denial of access to records.⁹ In certain circumstances, a sworn affidavit may be required to meet that burden.¹⁰

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.”¹¹ “[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.”¹²

⁵ Response.

⁶ *Id.* (emphasis in original).

⁷ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁸ 29 *Del. C.* § 10003(a).

⁹ 29 *Del. C.* § 10005(c).

¹⁰ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

¹¹ *Id.* at 1010.

¹² *Id.* at 1012.

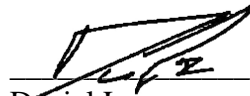
Generalized assertions in the affidavit will not meet the burden.¹³ For example, the Superior Court of Delaware determined that an affidavit outlining that legal counsel inquired about several issues, without indicating who was consulted, when the inquiries were made, and what, if any documents, were reviewed, was too generalized to meet this standard.

Here, you challenge the DSP's assertion that it currently does not have the requested information responsive to those two portions of the request and ask our Office to determine whether the DSP performed an adequate search for this information. While a public body is not required to create a new document in response to a FOIA request, producing "easily disclosable information stored in a computer system does not require the creation of a new record."¹⁴ In this case, you seek specific sets of statistics. Neither party alleges that such information is not subject to FOIA on its face. Rather, the DSP intends to produce such records but argues that despite what you received from the Governor's Office, the DSP currently does not have "finalized" responsive records to produce. Because the DSP has not produced any sworn statements to support its Response, including statements demonstrating it conducted an adequate search for the requested records, we must find the DSP in violation of FOIA. We recommend that the DSP, in compliance with the timeframes set forth in Section 10003, review its records and supplement its response with any additional records, responses, or information, if appropriate under FOIA.

CONCLUSION

For the foregoing reasons, we conclude that the DSP violated FOIA by failing to demonstrate through sworn statements that the identified portions of your request for records were appropriately denied.

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Joseph Handlon Deputy Attorney General
Dorey Cole, Deputy Attorney General

¹³ *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.'").

¹⁴ *Vanella v. Duran*, 2024 WL 5201305, at *9 (Del. Super. Dec. 23, 2024).