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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB18

April 22, 2026

Via Email

Toja M. Ricketts, Jr.
tojaricketts@gmail.com

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

Dear Mr. Ricketts:

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 March 10, 2026, you submitted a FOIA request to the DSP seeking “any dash camera footage, body camera footage, and incident reports” related to a certain traffic stop conducted by the DSP on March 5, 2026.¹ On March 12, 2026, the DSP denied this request pursuant to 29 *Del. C.* § 10002(o)(3) for investigatory file records for criminal law enforcement purposes; 29 *Del. C.* § 10002(o)(4) for criminal records, and 29 *Del. C.* § 10002(o)(9) for records pertaining to pending or potential litigation. This Petition followed.

In the Petition, you contend that the DSP improperly denied your request, because the denial “appears to apply a blanket exemption without demonstrating how release of the requested

¹ Petition.

records would interfere with an active investigation.”² You argue that the FOIA requires a more specific justification. In addition, you believe that this denial is improper, as you seek records related to an incident involving you.

On April 7, 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 and police reports, fall within the investigatory files exemption. The DSP argues that the records you requested, which pertain to a specific traffic incident, fall within the investigatory files exception. Further, the DSP points out that because the requested records pertain to an ongoing criminal/traffic matter with the State, the litigation exemption was appropriately invoked. Finally, the DSP contends that “the provision of video footage and police report of a pending traffic matter runs afoul of § 10002(o)(4), prohibiting the disclosure of ‘[a]ll other criminal . . . files’” and the “requested footage pertains to a pending criminal matter and is therefore objectionable under §10002(o)(4).”³ The DSP enclosed an affidavit from its Community Relations Officer, who attests that the request seeks police reports and video in the DSP’s possession that pertain to a traffic stop that resulted in the issuance of several violations of Delaware Code, and those citations are the subject of a pending case in the Justice of the Peace Court.

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.”⁴ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁵ The public body has the burden of proof to justify its denial of access to records.⁶ In certain circumstances, a sworn affidavit may be required to meet that burden.⁷

Under FOIA, “records pertaining to pending or potential litigation which are not records of any court” are excluded from the definition of “public record.”⁸ In considering this exemption, we must discern whether litigation is pending and whether the records that the requesting party

² *Id.*

³ Response.

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

⁵ 29 Del. C. § 10003(a).

⁶ 29 Del. C. § 10005(c).

⁷ *Judicial Watch, Inc.*, 267 A.3d at 1012.

⁸ 29 Del. C. § 10002(o)(9).

seeks pertain to that pending litigation.⁹ The relationship between these requested records and this litigation is considered, including the timing and nature of the requests with respect to the pending litigation.¹⁰ “[W]hen parties to litigation against a public body seek information relating to the litigation, they are not doing so to advance ‘the public’s right to know,’ but rather to advance their own personal stake in the litigation.”¹¹ “Delaware courts will not allow litigants to use FOIA as a means to obtain discovery which is not available under the court’s rules of procedure.”¹² “And the legislature has made it clear that the Act is not intended to supplant, nor even to augment, the courts’ rules of discovery.”¹³

In this case, the Community Relations Officer’s affidavit makes clear that litigation related to your traffic stop is pending and the requested records relate to this litigation. We find that the requested records are exempt under Section 10002(o)(9) and that the DSP did not violate FOIA as alleged.¹⁴

Conclusion

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

⁹ See, e.g., *Del. Op. Att’y Gen.* 21-IB20, 2021 WL 4351857, at *2-3 (Sept. 14, 2021); *Del. Op. Att’y Gen.* 21-IB02, 2021 WL 559557, at *2 (Jan. 21, 2021) (“[W]e believe that the application of this exemption should be limited to determining whether litigation is pending and whether the records that the requesting party seeks pertain to that pending litigation.”).

¹⁰ *Del. Op. Att’y Gen.* 24-IB36, 2024 WL 4291960, at *3 (Sept. 17, 2024).

¹¹ *Grimaldi v. New Castle Cnty.*, 2016 WL 4411329, at *9 (Del. Super. Aug. 18, 2016) (citation omitted).

¹² *Mell v. New Castle Cnty.*, 835 A.2d 141, 147 (Del. Super. 2003) (citation omitted).

¹³ *Office of the Pub. Defender v. Del. State Police*, 2003 WL 1769758, at *3 (Del. Super. Mar. 31, 2003).

¹⁴ As the pending litigation exemption applies here, we need not address the applicability of the other exemptions. However, we note that the investigatory files exemption continues to apply after an investigation is closed. *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).

Very truly yours,

A handwritten signature in black ink, appearing to read 'DL', is positioned above a horizontal line.

Daniel Logan
Chief Deputy Attorney General

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