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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB20

May 5, 2026

Via Email

Jeffrey Stevens
jeffreystevens2011@gmail.com

RE: FOIA Petition Regarding the Delaware Department of Health and Social Services

Dear Mr. Stevens:

We write in response to your correspondence, alleging that the Delaware Department of Health and Social Services (“DHSS”) 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 DHSS did not violate FOIA by denying access to the requested records, nor by failing to compile an index of withheld records or to provide the requested explanations in its response to the request.

Background

On March 22, 2026, you submitted a FOIA request to the DHSS seeking the records “sufficient to show applications, redeterminations, and eligibility determinations submitted by [a certain individual] to DHSS or any affiliated agency for public assistance benefits from January 1, 2020 through present.”¹ The request sought the residential addresses used in applications, “records sufficient to show verification of residence,” caseworker notes and determinations, and “records sufficient to show whether any discrepancies, reviews, or investigations were conducted regarding reported residency or eligibility during this time period.”² The DHSS denied this request, stating

¹ Petition.

² *Id.*

personally identifying information from applicant files is not subject to FOIA pursuant to 29 *Del. C. § 10002(o)(6)*. The DHSS noted Attorney General Opinion precedent regarding the right of privacy and the balancing test for considering requests seeking personally identifiable information for commercial purposes and stated that “[a]s a general rule, the names and addresses of the holders of business licenses are exempt from disclosure by a common law right of privacy.”³ This Petition followed.

In the Petition, you contend that the DHSS’s denial of this request is improper. You believe that the application of the privacy exemption was overbroad, and the DHSS should have segregated and disclosed nonexempt information. You further allege that the DHSS mischaracterized your request, as it was not made for commercial purposes, but for the purposes of accountability and legal use. Additionally, you argue that the DHSS’s explanation of its denial was insufficient because it did not identify specific records withheld and how the exemption applies to each record, nor explain why partial disclosure was not feasible.

On April 16, 2026, the DHSS, through its legal counsel, replied to the Petition (“Response”). The DHSS contends that it properly asserted this denial on several bases. The DHSS states that this request for an applicant’s complete public benefits file is exempt from disclosure, as 31 *Del. C. § 1101* makes it unlawful for any person to disclose any information related to a person who has applied for or received Temporary Assistance for Needy Families, general assistance, food stamps, aid to the blind or medical assistance “where such information is derived directly or indirectly from the communications or records of the agency administering such aid or assistance.”⁴ The DHSS states that the limited exceptions to this statutory prohibition are clearly not applicable. The DHSS points out that the prohibited disclosure applies not only to the records themselves, but to any information directly or indirectly derived from them, meaning no segregable remainder from the records could be produced. The DHSS also alleges that the withholding of these records was appropriate pursuant to 16 *Del. C. § 1212(a)* that prohibits the disclosure of protected health information, mandatory federal confidentiality requirements, the right of privacy, and 29 *Del. C. § 10002(o)(1)* for medical files. The DHSS also argues that its denial was sufficiently specific, as these records were clearly exempt on their face and the DHSS provided the reason for denying the records.

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.”⁵ FOIA requires that citizens be

³ *Id.*

⁴ Response.

⁵ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

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

Section 10002(o)(6) excludes from the definition of public record any “records specifically exempted from public disclosure by statute or common law.” The requested information is exempt from disclosure under 31 *Del. C.* § 1101, which is broadly stated to include any information relating to a person who has applied for or receives assistance, whether that information was directly or indirectly derived from agency communications and records or acquired in the course of official duties.⁹ Thus, the DHSS did not violate FOIA in withholding records in their entirety under this rationale.¹⁰

In addition, you allege that the DHSS violated FOIA in its response by failing to identify the specific withheld records, to explain how the exemption applies to each record, and to state why partial disclosure was not feasible. A public body must give its reasons for denying access to requested records.¹¹ However, FOIA explicitly does not require a public body “to provide an

⁶ 29 *Del. C.* § 10003(a).

⁷ 29 *Del. C.* § 10005(c).

⁸ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁹ 31 *Del. C.* § 1101 (“Confidential character of public assistance records; penalties for violations” . . . “[i]t shall be unlawful for any person to solicit, receive or make use of, disclose, or authorize, knowingly permit, or participate in the use of any information relating to any person who has applied for or who receives Temporary Assistance for Needy Families, general assistance, food stamps, aid to the blind or medical assistance where such information is derived directly or indirectly from the communications or records of the agency administering such aid or assistance or is acquired in the course of the performance of official duties. . . [subject to four exceptions].”). The Petition does not allege circumstances in which any exceptions would permit release, including administering aid or public social services, the individual’s consent, or a court order.

¹⁰ As this determination finds that the requested records were appropriately withheld under 31 *Del. C.* § 1101 pursuant to Section 10002(o)(6), we need not address the remaining rationales. We note that this Title 31 statutory prohibition and other reasons were cited for the first time in response to this Petition; we encourage the DHSS to give due consideration to all the reasons asserted for its denials in answering requests. See, e.g., *Del. Op. Atty. Gen.* 22-IB16, 2022 WL 1547876, at *3 (Apr. 29, 2022); *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, n. 37 (Mar. 10, 2017) (“While, in this instance, we have determined that DNREC’s denial of your request was indeed authorized by FOIA, we nevertheless caution DNREC to give careful consideration to the reason(s) provided, pursuant to 29 *Del. C.* § 10003(h)(2), for any FOIA denial.”).

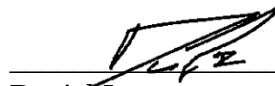
¹¹ 29 *Del. C.* § 10003(h)(2).

index, or any other compilation, as to each record or part of a record denied.”¹² We also find no violation with respect to these claims.

Conclusion

For the foregoing reasons, we conclude that the DHSS did not violate FOIA by denying access to the requested records, nor by failing to compile an index of withheld records or to provide the requested explanations in its response to the request.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Logan", is written over a horizontal line.

Daniel Logan
Chief Deputy Attorney General

cc: Lauren E. Maguire, Deputy Attorney General
Dorey L. Cole, Deputy Attorney General

¹² *Id.*