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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB21

May 6, 2026

Via Email

Breiana Aaliyah Loyd
briannableuu97@icloud.com

RE: FOIA Petition Regarding New Castle County

Dear Ms. Loyd:

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 by withholding access to the requested records.

Background

In April 2026, you submitted a FOIA request to New Castle County, seeking records related to a law enforcement operation, including SWAT, conducted at your residence.¹ Specifically, you sought incident reports, SWAT operation reports, arrest reports, body camera footage, 911 call recordings, property damage reports, and documentation related to entry and boarding of the residence. On April 8, 2026, the County denied this request in its entirety, citing 29 *Del. C.* § 10002(o)(3) which pertains to investigatory file records, 29 *Del. C.* § 10002(o)(4) which pertains to criminal files and records, and 29 *Del. C.* § 10002(o)(5) which pertains to intelligence files. This Petition followed.

In the Petition, you contend that you are the resident who is a victim of property damage resulting from this law enforcement operation, and as the requested records relate to property damage and government conduct, they are not entirely exempt from disclosure. Rather, you

¹ Petition.

believe that portions of these records should be released in redacted form, and the County's denial was overly broad.

On April 16, 2026, the County, through its legal counsel, responded to your Petition. The County maintains that its denial of access to these records is appropriate under FOIA. The County argues that the relevant inquiry for determining the applicability of the investigatory and criminal files exemptions focuses on the purpose of the files' creation. The County provided an affidavit from the Assistant Chief of the Emergency Communications Division, stating that this division received 911 calls from residents in the area related to the incident and those call records are part of the investigatory files compiled for civil or criminal law enforcement. The County enclosed a second affidavit from the County Police Sargeant serving as the Department of Public Safety FOIA Coordinator, who attested that the incident reports, SWAT operation reports, body camera footage, property damage reports, and any entry and boarding documentation were part of an investigatory files compiled for civil or criminal law enforcement purposes. In addition, the affidavit noted that the arrest reports are part of the criminal files under Section 10002(o)(4), the disclosure of which would violate the privacy of that individual. The Sargeant also states under oath that it is not standard practice to board up a residence following a SWAT operation and confirmed with unidentified staff that the County police were not involved in the boarding of the residence; thus, the County has no responsive records. Additionally, the Sargeant attests that the SWAT operation reports and entry documents are exempt under Section 10002(o)(5) because the records "contain sensitive tactical information including methods of entry, deployment strategies, operational planning, and law enforcement capabilities, the release of which could compromise officer safety and the effectiveness of future operations."²

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."³ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁴ The public body has the burden of proof to justify its denial of access to records.⁵ In certain circumstances, a sworn affidavit may be required to meet that burden.⁶

² Response.

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

⁴ 29 Del. C. § 10003(a).

⁵ 29 Del. C. § 10005(c).

⁶ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

Section 10002(o)(3) 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.” “[T]he investigatory exemption attaches as soon as an agency is first made aware of a potential issue.”⁷ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.⁸ Here, this request seeks records related to a law enforcement encounter that occurred at your residence; such records, on their face, pertain to an investigation for civil or criminal law enforcement purposes.⁹ Thus, to the extent that the County has responsive records, these records are considered part of law enforcement investigatory files and are exempt from disclosure pursuant to 29 *Del. C.* § 10002(o)(3).

Conclusion

Based on the foregoing, we conclude that the County did not violate FOIA by withholding access to the requested records.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

⁷ *Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

⁸ *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).

⁹ *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).”).

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Colleen K. Norris, Assistant County Attorney