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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB23

May 19, 2026

Via Email

Matthew Peters
mattpeters.71@gmail.com

RE: FOIA Petition Regarding New Castle County

Dear Mr. Peters:

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

On March 27, 2026, you submitted a FOIA request to New Castle County, seeking records related to an incident with New Castle County police, including a copy of the police report, with the narratives, officer notes, witness statements, and any related documentation. You also sought any incident reports, supplemental reports and any determinations made by the responding officer. You indicated you were the reporting party, and no victim was listed in the report. On March 31, 2026, the County denied this request in its entirety, citing 29 *Del. C.* § 10002(o)(3), which pertains to investigatory file records. This Petition followed.

In the Petition, you contend that the County's denial is improper and overbroad. You state you are the complainant and are requesting records directly related to the incident you reported. You allege the County failed to indicate whether the investigation is active, which is relevant to determining if the investigatory files exemption applies. Further, you contend that the complete denial of records, without partial disclosure or providing segregable, non-exempt portions of the records, suggests this exemption was inappropriately applied. Finally, you assert that as a victim

was reportedly not listed in the police report, you question the basis for withholding the requested documentation.

On April 29, 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's counsel indicates in unsworn statements that this incident pertains to a verbal argument, which resulted in a 911 call. The County enclosed an affidavit from the County Police Sargeant who serves as the FOIA coordinator, attesting that the requested information is contained within the investigatory file compiled for civil or criminal law enforcement purposes. The Sargeant also states that there are no supplemental reports, so no responsive records exist for that portion of the request. The County asserts that it is well-settled that the investigatory files exemption applies here to exempt all the file records and continues to apply after the investigation is closed. Further, the County maintains that all responsive records are exempt in their entirety as they are part of the investigatory file and that the other factors raised in your Petition, including your status as the complainant and lack of victim in the report, are not relevant to the application of this exemption.

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."¹ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.² The public body has the burden of proof to justify its denial of access to records.³ In certain circumstances, a sworn affidavit may be required to meet that burden.⁴

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."⁵ This exemption is not limited to pending investigations and continues to apply after an investigation is closed.⁶ Here, this request seeks records related to a law enforcement encounter;

¹ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

² 29 Del. C. § 10003(a).

³ 29 Del. C. § 10005(c).

⁴ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁵ *Del. Op. Att'y Gen.* 17-IB05, 2017 WL 1317847, at *3 (March 10, 2017).

⁶ *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.*

such records, on their face, pertain to an investigation for civil or criminal law enforcement purposes.⁷ The other cited factors regarding the status as a complainant and the lack of victim in the report do not alter this analysis. Thus, to the extent that the County has responsive records, these records are considered part of the law enforcement investigatory file and are exempt from disclosure in their entirety 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

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Colleen K. Norris, Assistant County Attorney

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).

⁷ *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).”).