



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION: (302) 577-8400
CRIMINAL DIVISION: (302) 577-8500
FAMILY DIVISION: (302) 577-8400
FRAUD DIVISION: (302) 577-8600
DIVISION OF CIVIL RIGHTS & PUBLIC TRUST: (302) 577-5400
FAX: (302) 577-2610

Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB26

May 20, 2026

Via Email

Daniel Stevens
dstevensccs@yahoo.com

RE: FOIA Petition Regarding the Town of Clayton

Dear Mr. Stevens:

We write in response to your correspondence, alleging that the Town of Clayton 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 Petition's claim regarding the first item is now moot because the Town withdrew its denial and provided the requested records. The Town violated FOIA with respect to the second and third items by failing to meet its burden to demonstrate that this data was appropriately withheld under FOIA. However, the Town did not violate FOIA by withholding access to the GPS tracking information for its Town police vehicles.

Background

On February 20, 2026, you submitted a FOIA request to the Town of Clayton seeking the following: (1) the full contract with the Town's vendor, Flock Safety, including the cost, duration, data access policies, data retention policies, and the frequency of data removal audits; (2) all data collected from Flock Safety cameras regarding two specified license plate numbers, including locations, dates, and times of image captures for 2026; (3) all collected data from Flock cameras associated with all Clayton-owned vehicles, including locations, dates, and times of image captures for 2026; and (4) all 2026 GPS tracking data for the Clayton police vehicles. The Town, in response to the first item, provided a copy of the contract and denied the remainder of the first request under Section 10002(o)(2), (5), and (17)(a)(7). The Town denied access to the records sought in the second and third items, stating it had no responsive records. For the fourth item, the

Town denied access to the records pursuant to Sections 10002(o)(3), (4), (5), and (17)(a)(7). This Petition followed.

In the Petition, you allege that the requests were improperly denied. For the first item, you contend that the data policies cannot constitute trade secrets. For the second item, you argue that these are license plates of vehicles you own and if the requested data for these vehicle license plates has not been collected, then Flock Safety has violated its contract. Regarding the third item, you argue that the Town's vehicles are purchased with tax dollars and are owned by Town residents and if the data about the vehicles has not been captured, Flock Safety is in violation of the contract. For the fourth item, you assert that the cited exemptions do not apply to the GPS tracking for police vehicles because the tracking data is not part of an investigatory file unless the officer is under investigation; you are not requesting criminal records or files; and requesting data about vehicle usage is necessary for oversight over those officers entrusted with the privileges granted to officers of the law.

The Town, through its legal counsel, replied to this Petition ("Response") and enclosed the affidavit of the Town's police chief. With respect to the first item, the Town notes it previously provided the contract, which included cost and duration, but it denied the remainder of the request for policies because the Town did not have policies of its own and Flock Safety's policies provided to the Town were subject to confidentiality provisions. However, based on more recent information, the Town states that it is withdrawing its denial of access and is providing the Flock policies it has. Since that time, the Town has adopted its own policies, and those are also provided with this Response.

For the second and third items, the Town states that it accurately responded to your request that it has no responsive documents, as it does not collect data for Town vehicles or the identified license plates; the Town explained that the cameras installed in Town at various locations allow the police department to gather and analyze data to quickly identify and locate vehicles or persons of interest for law enforcement purposes. When needed for a legitimate law enforcement purpose, a law enforcement officer can log into the system and access information, which is only retained for thirty days. The Town stated that before adopting its own policy, the Town used these cameras in accordance with DELJIS and CJIS security protocols; the cameras cannot be used for any other purpose other than law enforcement or community safety. While the Town acknowledges it could theoretically request information on specific license plates or Town vehicles, it would violate DELJIS and CJIS standards to do so. Hence, the Town stands by its assertion it has no responsive records and cannot legitimately create records.

For the fourth item, the Town asserts it installed GPS tracking in all police vehicles in 2025 through Verizon and the Town's authorized members can access the data through the Verizon website; this data is also only retained for thirty days. Because of this, the Town contends it does not have any existing records in its possession. Additionally, the Town has significant concerns with releasing such information and does not believe these records are public under Section 10002. Specifically, the Town asserts that the confidential information collected includes police activities, such as the times, addresses, idle time stops, and miles driven, in addition to sensitive information about officers' home addresses. Releasing this information, the Town argues, would "jeopardize contact with victims and witness[es]," in addition to clearly endangering police officers, witnesses,

and victims, and disrupting local safety.¹ The Town enclosed the affidavit of its police chief, attesting that you were provided a full copy of the contract. The chief attests that he did not conduct any document searches, because the chief is not aware of responsive documents, and creating responsive documents would have violated applicable DELJIS standards.

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."² FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.³ The public body has the burden of proof to justify its denial of access to records.⁴ In certain circumstances, a sworn affidavit may be required to meet that burden.⁵

For the first item regarding the policies for data access and retention and data removal audits, the Town withdrew its initial refusal to provide records. The Town provided with its Response copies of its own policies and the Flock Safety policies. As such, your petition regarding this first request is moot.⁶

For the second and third items, the Town first asserts that the data records you seek are not in its possession and thus, it has no responsive records. The definition of "public records" is not limited to records in the public body's possession;⁷ rather, the scope includes those records

¹ Response.

² *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

³ 29 Del. C. § 10003(a).

⁴ 29 Del. C. § 10005(c).

⁵ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

⁶ See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *13 (Del. Ch. May 19, 1994); *Del. Op. Att'y Gen.* 18-IB30, 2018 WL 3118433, at *2 (Jun. 7, 2018); *Del. Op. Att'y Gen.* 17-IB35, 2017 WL 3426275, n. 3 (July 31, 2017) (citing *The Library, Inc. v. AFG Enter., Inc.*, 1998 WL 474159, at *2 (Del. Ch. July 27, 1998)).

⁷ 29 Del. C. § 10002(o) ("Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced."); see also 29 Del. C. § 10003(j) (requiring public bodies to request from the relevant custodian "records controlled by the public body but are not within its possession").

over which a public body has ownership.⁸ The provided contract states the Town retains ownership of the Town's data.⁹ Furthermore, FOIA requires access to existing public records "regardless of the physical form or characteristic by which such information is stored, recorded or reproduced."¹⁰ "Producing easily disclosable information stored in a computer system does not require the creation of a new record."¹¹ Thus, we believe that this data, if it exists, is part of the Town's records subject to FOIA.

The Town's second rationale for denying access to the records sought in the second and third items is based on the limitations set by DELJIS and CJIS protocols and by Town policy. The Town acknowledges it could theoretically request information on particular license plates you identified, but to do so, would violate DELJIS and CJIS standards because the request would not pertain to a law enforcement or community safety function. The Town asserts that before it adopted its own internal Flock Safety camera policy, it only used cameras in accordance with DELJIS and CJIS security protocols. Records specifically exempted from public disclosure by statute are not public records under FOIA, but FOIA does not have an exemption permitting the Town to adopt internal policies or to apply another public entity's standards for releasing this data.¹² As neither of the Town's rationales in its Response are acceptable reasons to withhold the Flock Safety data for the two specific license plates or the Town vehicles, we must find that the Town violated FOIA by denying access to this data. We recommend that the Town, 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.

For the fourth item regarding the GPS tracking information for all Town police vehicles, the Town invoked the safety exemption in Section 10002(o)(17), which precludes disclosure of the GPS tracking of police vehicles.¹³ The portion of the safety exemption applicable here, Section 10002(o)(17)(a)(5), has four factors: "(1) disclosure of the records could endanger individual life or physical safety; (2) the portions of the records at issue were created or maintained to prevent, mitigate, or respond to criminal acts; (3) disclosure of the records would have a substantial likelihood of threatening public safety; and (4) the records fit within 'specific and unique'

⁸ See *Del. Op. Att'y Gen.* 06-IB17, 2006 WL 2630107, at *5-6 (Aug. 21, 2006) (finding the Public Integrity Commission to be the custodian of a database created and held by a vendor on an outside server and noting the Commission owned the data and retained access to the database).

⁹ Response.

¹⁰ 29 *Del. C.* § 10002(o).

¹¹ *Vanella v. Duran*, 2024 WL 5201305, at *9 (Del. Super. Dec. 23, 2024).

¹² 29 *Del. C.* § 10002(o)(6).

¹³ As we find the records were appropriately withheld, we need not consider the Town's claim regarding its lack of responsive records.

vulnerability assessments or response/deployment plans or are underlying data collected to facilitate those assessments or plans.”¹⁴ In this case, you seek the specific tracking information of the Town’s police vehicles; police officers are involved in responding to and preventing criminal acts. These records would show police deployments, patterns, and response plans and activities, endangering the physical safety of the officers and the public’s safety during law enforcement activities. As such, we find that the Town did not violate FOIA by withholding access to this information.

Conclusion

For the reasons set forth above, we conclude that the Petition’s claim regarding the first item is now moot because the Town withdrew its denial and provided the policies. The Town violated FOIA with respect to the second and third items by failing to meet its burden to demonstrate that this data was appropriately withheld under FOIA. We also determine that the Town did not violate FOIA by withholding access to the GPS tracking information for its Town police vehicles.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Scott E. Chambers, Attorney for the Town of Clayton

¹⁴ *Vanella v. Duran*, 2024 WL 5201305, at *7.